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Workman's compensation in the District of Columbia

Washington

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WORKMAN'S COMPENSATION IN THE DISTRICT OF COLUMBIA

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HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

FIRST SESSION

ON

H. R. 4089

WASHINGTON
GOVERNMENT PRINTING OFFICE
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WORKMAN'S COMPENSATION IN THE DISTRICT OF COLUMBIA.

SUBCOMMITTEE OF THE COMMITTEE,
ON THE DISTRICT OF COLUMBIA,
HOUSE OF REPRESENTATIVES,
Monday, May 16, 1921.

The subcommittee met at 10 o'clock a. m., Hon. Roy G. Fitzgerald (chairman) presiding.

Mr. FITZGERALD. At the last meeting of the committee, there were several reservations made by persons who desired to be heard especially in opposition to the bill, and, I think, also, by some who desired to be heard in support of the bill. I think Mr. Nesbit is the first one who has a reservation of time, but I understand he is not present. The next reservation of time is for the Washington Chamber of Commerce.

STATEMENT OF HON. JAMES T. LLOYD, REPRESENTING THE WASHINGTON CHAMBER OF COMMERCE.

Mr. LLOYD. Mr. Chairman, I am representing the Washington Chamber of Commerce. I am a vice president of the Chamber of Commerce and am chairman of the law and legislation committee of that body. We have had this bill under consideration, but we are not prepared at this moment to make a formal appearance in the hearing before you and state our views. What we would like to do would be to submit a brief, and I suppose that will be more satisfactory to you.

Mr. FITZGERALD. I can not say that, because we would like, of course, to hear from you, but I assure you that your brief will be given careful attention.

Mr. LLOYD. How long will you give us?

Mr. FITZGERALD. Can you file it within a week?

Mr. LLOYD. I think we can file it in a week.

Mr. FITZGERALD. Of course, the sooner you file it the better.

Mr. LLOYD. Then, we will file a brief between this time and Monday next.

Mr. FITZGERALD. The Washington Merchants and Manufacturers' Association had some time reserved this morning, or 10 minutes, I think. Is there anyone here representing them? There does not appear to be anyone present representing them. Have the automobile people a representative here? If not, we will hear Mr. Montague, of Richmond.

Mr. MONTAGUE. If there is anyone else present who desires to speak, I had just as leave wait. As this is my first appearance in the hearings I would like to first get my bearings.

Mr. FITZGERALD. We will hear Mr. Henry Nolda, representing the Central Labor Union.

STATEMENT OF MR. HENRY NOLDA, REPRESENTING THE CENTRAL LABOR UNION, WASHINGTON, D. C.

Mr. NOLDA. Mr. Chairman, the Central Labor Union is in thorough accord with this bill in every detail. The Central Labor Union has for years been trying to get a compensation bill; it has used every effort in its power to have a compensation bill introduced in this Congress for the benefit of the workers, so that the workers might be protected, and I want to compliment you at this time, Mr. Chairman, for having the nerve to introduce this bill. [Laughter in committee room.]

It may be laughable, but I mean every word I say. When a lot of people are constantly meeting with accidents and have no redress outside of the courts, it is a serious consideration for the worker. There is nothing in this bill that I can see that is not for the benefit of the workers. There has been a great deal of talk about hazardous employment; Mr. Chairman, there are very few working men who realize how hazardous their employment is or that there is any hazard or any danger connected with it. If they were to realize the danger of their employment, they would not be able to do the work.

For instance, take the structural iron worker or the structural steel worker, and he will cheerfully cross those beams as unconcerned as you would walk across this floor. While it almost makes you stop breathing to see it, they are unconcerned. They have got to be unconcerned, because otherwise they could not do that work. There is no hazardous employment in the strict sense of the word, so far as the man is concerned. Still, if we were to go into a court and try to establish the fact that our employment was in no way hazardous, some lawyer would get up and make us look like a 2-cent piece, for the simple reason that we would not be able to define that word "hazardous" to the satisfaction of the court.

Mr. UNDERHILL. I do not want to interrupt your statement, but I think we all agree that employments are hazardous and also that a workman's compensation act is desirable. I think we are a unit on that.

Mr. NOLDA. I am through with the hazardous part of it anyhow.

Mr. FITZGERALD. I think that has been discussed.

Mr. NOLDA. Yes, sir; it has been and will be some more, I understand.

Mr. FITZGERALD. It provides ostensibly for hazardous employment and then declares all employments hazardous. That is a roundabout way, possibly, and it has been suggested that there is a little camouflage about it.

Mr. NOLDA. Great stress was placed by the chamber of commerce and board of trade upon the President's remarks, in opening Congress, that there should be more business in Government and less Government in business. Can any man in this room point to the time when the Government was not in business, and does anyone want to change that part of it? We have had the postal system, our printing office, our Bureau of Engraving and Printing, our machine shops, navy yards, and everything else of that sort run by the Government. Now, that being true, is it going to be such a detriment to the United States Government to have a commission to handle this insurance feature? That is the proposition that is taken care of. It is not provided in that particular phase of it that the Government will be taking over that broad field to the extent that it will affect the business of the United States, but this is only going to affect the District of Columbia, with a population of about 500,000, estimating it at the very highest. That is all it provides for, and we are emphatically in favor of that particular phase of it, Mr. Chairman.

We have through experience found that if insurance companies or other agencies are used, we are the losers. Irrespective of the money it saves to the men who are the real employers, or who would really have to pay the compensation, it saves money. It is a big saving to the Government. You already have a board that is functioning in that capacity now. A great deal has been said about the President. The laboring people are willing to put that proposition up to the President, and we have that faith in the President of the United States to at least say that he is fair-minded on this, and the working people of the District of Columbia, irrespective of the talk to the effect that the President is againstt he workingmen, will be willing to put it up to him. The working men are for the President, and he is equally our President, or just as much our President as he is the President of anyone else, Mr. Chairman. This is a compensation bill for the workingmen and not for the chamber of commerce, or manufacturers' organization, or boards of trade, or insurance companies. This is a bill for the workingman. There has been a great deal said about the bill not being constitutional. I am no lawyer, Mr. Chairman, and I do not know anything about law, but I thought that this bill was of such importance that I would at least try to get some advice on the constitutional phases of it. I am going to quote you a decision by the United States Supreme Court. This is the case of New York Central Railroad Co. *v.* White (1917), 243 United States Reports, page 188, and I will read from it:

> The question of due process is here disposed of by pointing out that the common-law doctrine of the employer's liability for negligence, with its defenses of contributory negligence, fellow service, and assumption of risks, "is based upon fictions and is inapplicable to modern conditions of employment," its application resulting in litigation that "is unduly costly and tedious, encouraging corrupt practices, and arousing antagonism between employers and employees."

Here is the part I want especially to call your attention to:

> The close relation of the rules governing liability for injuries to the fundamental rights of liberty and property is recognized; "but these rules, as guides of conduct, are not beyond alteration by legislation in the public interest. No person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit."
>
> Negligence is said to be "merely the disregard of some duty imposed by law, and the nature and extent of the duty may be modified by legislation, with corresponding change in the test of negligence."
>
> The fellow-servant doctrine is characterized by "material differences in different jurisdictions," and "it needs no argument to show that such a rule is subject to modification or abrogation by a State upon proper occasion."

This is a decision by the Supreme Court of New Jersey, in the Sexton case, in reference to jury trial:

> A similar conclusion was reached by another line of argument, the court saying that "the right of trial by jury accorded by the Constitution, as applicable to civil cases, is incident only to causes of action recognized by law." If, therefore, the legislature is able to take away the cause of action on the one hand and the ground of defense on the other and merge both into a statutory indemnity, the right to sue has fallen and

with it, of necessity, the right of jury trial. The United States Circuit Court of Appeals, while discussing the Washington statute (Raymond *v.* Chicago, Milwaukee & St. Paul Railway Co., 233 Fed. 239), pointed out that the guaranty of the Federal Constitution as to trial by jury does not prevent the establishment of a process of law in which trial by jury is omitted.

I only make reference to those two paragraphs I read in order to show that it has been done and that it can be done—that is, that the law can be changed, and this bill makes provision for changing the law.

Mr. FITZGERALD. At the suggestion of one of the opponents of the bill, the committee applied to the Attorney General for an opinion on the bill, and he gave us a very exhaustive opinion on the point that he does not have to give us an opinion in regard to the constitutionality of the law, and so we are where we started.

Mr. NOLDA. One more point, Mr. Chairman, and that is in regard to the servant question. It has been stated that the servant question is not a proper function under this bill at all; that there is nothing hazardous about the servant question, and, in fact, one gentleman stated last Thursday that the only hazardous part was in paying the salary of the servant. There is just as much hazard in the servant question as there is in any other question, and oftentimes the employer of the servant makes it hazardous. I am an upholsterer by trade, and it has been my privilege to be around in a great many private houses, and, Mr. Chairman, they will deliberately give you a ladder to work with that is not fit for anybody to go up on, and you know those people should receive a certain protection from that.

I will not take up the time of the committee in talking about all of these things, but I would suggest that in that particular paragraph, so far as servants are concerned, in fixing the charge of the employer of the servant at 10 per cent, 5 per cent, or whatever it is, the matter might be taken under consideration, and make the payment irrespective of the salary that the servant gets. That is only a suggestion, Mr. Chairman, and we do not insist upon it. I do not represent any servants, because we have no servants in the organization that I represent. There is one other thing that I would like to bring out, and it has met with the approval of the chamber of commerce, board of trade, etc. It has been stated that it was thought the maximum was too low, but we do not want to make any change in the maximum, as far as the 66⅔ per cent is concerned, and we do not ask it. While we would, of course, readily accept it, we do not ask it, but we think that the maximum for the lower pay—that is, where the pay the employee receives is only $7 per week he shall receive $7 per week—is too low, and if it could be possible for this committee to change that $7 to $9, it would be a good thing for the poor man who gets only $7 per week, although he may be totally disabled. I think if that $7 could be changed to $9, it would do a great deal toward stopping a lot of begging on the streets, which naturally follows on a situation of that kind. I do not think that the chamber of commerce or board of trade would have any objection to that. I would not want to jeopardize the bill, because we are in favor of the bill as it is written. We believe that it is one of the best bills ever put before the American people, and we desire that this bill shall become a law if it is within the power of you gentlemen to pass it.

I thank you.

Mr. FITZGERALD. The criticism of almost all the State acts has been their utter lack of liberality, both in the law itself and in its administration, but this bill as at present drawn does make provision for those people.

Mr. NOLDA. Yes, sir; I realize that.

Mr. FITZGERALD. Here is something that has been reported to the committee by the Department of Labor: There have been three persons killed in domestic service last year and a number injured, and I wonder if you could get in touch with the Department of Labor and get some information as to how they were killed and what their circumstances were?

Mr. NOLDA. Mr. Hooks is here, and perhaps he could give you that information.

Mr. UNDERHILL. You and your organization are chiefly interested in securing a workman's compensation law?

Mr. NOLDA. Yes, sir.

Mr. UNDERHILL. You are chiefly interested in seeing that the injured workman is compensated for his lost time?

Mr. NOLDA. Yes, sir.

Mr. UNDERHILL. And is taken care of when injured?

Mr. NOLDA. Yes, sir.

Mr. UNDERHILL. And the minor details of the bill would not affect your position or advocacy of it? In other words, as long as it accomplishes that purpose, you would not have any particular interest in the minor details?

Mr. NOLDA. That is true. We would like to have the insurance feature stand as it is in the bill, because we think that we would receive better treatment under it. We have too often been gouged by employers that have those things in hand.

Mr. UNDERHILL. None of the companies have anything to do with the awards under this bill or any other bill, but that is done by the commission.

Mr. NOLDA. There is an objection to this commission by the opponents of the bill, and there is one little feature that I would like to call attention to. I have here the Jones bill, and I call your attention to the language on page 13, line 13. That unlucky number is my lucky number. That provision reads:

> It is hereby declared to be the intent of this act to restore to industry those injured in the course of employment. The commission shall accordingly assist industrially the employees in obtaining proper training, education, and employment, and may cooperate with the Federal Board for Vocational Training for that purpose.

Where would there be an insurance company to-day in America that would take any part in those functions?

Mr. UNDERHILL. The commission would do that under the laws of the States, or that is true in most of them.

Mr. NOLDA. I thank you for your attention.

STATEMENT OF MR. HILL MONTAGUE, RICHMOND, VA., REPRESENTING THE FRATERNAL CONGRESS OF AMERICA.

Mr. MONTAGUE. Mr. Chairman, I just learned a few days ago that this bill was pending here, and I have come up to offer in a few words some general suggestions. I do not think it egotistical, but, in order that I may make my position better known, I think I had better say

to you that I am the past president, and the last past president, of the National Fraternal Congress of America, and I am a member of its executive committee for the past seven or eight years. It is also proper that I should say that I am a member of the board of trustees of the Insurance Federation of America, representing the fraternal societies of this country on that board.

Mr. FITZGERALD. That means the Woodmen of the World and other like organizations?

Mr. MONTAGUE. No, sir; the National Fraternal Congress of America is one that covers fraternal benefits, properly speaking. Although it has nothing to do with this subject, merely to show you what my position in the fraternal world is, I might mention the fact that I am the chairman of a committee just now appointed by the Near East relief, which was incorporated by Congress for the purpose of furnishing relief to Syria and Armenia. I am chairman of the national advisory committee of that organization. I served, a little more than a year ago, as a member of the committee of which Warren G. Stone, a well-known labor man, was chairman, which sent a commission to Europe to study the general question of State insurance. So it comes around, I think, that I am somewhat in touch with the fraternal end of these matters.

The fraternalists, Mr. Chairman, are opposed to State insurance, whether by the National Government or by State governments, because they consider it monopolistic. They do not believe that is a proper sphere of government. Now, we have nothing to say, please understand, against the passage of statutes providing for workmen's compensation laws. We do not at all object, indeed we favor, the doing away with what is known as the fellow-servant's doctrine, an old doctrine. I happen to belong to that profession which my friend over there does not like so much, so that I know what the whole servant's doctrine is, and as a fraternalist I have favored abolishing that doctrine.

I am not here to claim that the doctrine of contributory negligence should longer obtain, but I am here to say that the people with whom I have been associated, the fraternalists over this country, do not favor either Government or State insurance. We believe it is monopolistic and that it can best be managed by private companies. We think it is a highly technical business. It is one of the few businesses that is not interstate commerce. It has been long ago decided by our Supreme Court that insurance is not interstate commerce, so that you have not even that much to go on when the Government undertakes to take charge of it. I think that anything that tends toward paternalism in times like these is inadvisable. I think the Government has a full job on its hands, and I think that if it can work out the many problems which lie before it at this time it will have accomplished a wonderful thing for our country, and I do not believe that with the present unsettled state of business conditions it is at all desirable that the Government should here in Washington, having as it has immediate charge and direction of the affairs of the District of Columbia, enter now into a Government insurance plan.

Of course, I recognize the fact that you are the patron, that the chairman of this subcommittee is the patron of this bill and, of course, understand that you sincerely believe in this proposition,

but I represent in speaking to you, in so far as one may represent in an official position—I represent in that kind of way, and we all know we can not touch elbows with every man in a large number of persons—but I represent what I call the common people of this country. I am authorized to speak for these fraternal benefit societies in any matters of legislation of this character. They constitute what we know especially as fraternal benefit societies, those that furnish sick benefits, accident benefits, and funeral benefits to more than 10,000,000, and I think I am in touch with these people. Many of them are laboring people, most of them are laboring people. I quite well understand that some of the organized labor organizations come before such committees as this, or in the States, and favor such a bill, but we people who are interested in these fraternal societies feel we can take a broad, judicial view of the situation; we feel that our hearts beat with the hearts of the common people of this country and we believe, those of us who have studied it, that it is not desirable that this class of business, at least, be administered by the Government. That was the information we got from Europe; that is the way we got it from Germany, from England, from France, and other countries. I find in this bill—while I will not undertake to criticize your bill in detail and that is not my purpose—provisions along the line of paternalism, and I trust that this Government will pause before it adopts a law for the District of Columbia which may be carried out into these other States and be cited as something on which the United States Government is embarking.

I said just now that the insurance business is highly technical. I find in this bill a provision that the premium rates shall be calculated so as to provide adequate reserves and a reasonable surplus. That is a highly technical feature of the bill, and if you do have premium rates which will be adequate on a reserve basis and also provide for a surplus then you can not, it seems to me, do other than all the companies that have spent years and years in the business can do.

I do not understand that there is a demand for such legislation as this, and while I believe it is all right to have a workman's compensation statute and an industrial commission to ascertain the claims, I believe that is as far as the National Government or the State government should go. I do not believe that we want more government in matters of this kind. I believe, Mr. Chairman, that such laws tend to destroy individual initiative, tend to destroy individual independence; they tend to make each individual who comes under such laws feel that the Government looks after everything; that he is a ward of the Government. They do not tend to greater independence in a man, and to that extent, I believe, they do not tend to create that kind of citizenship which we believe has made America what she is to-day.

You can say you know better about this than I do, and perhaps you do; I am not here to say you may not; I am simply here to say that for the past 25 years I have mixed and associated with the people whom I represent in all States of this Union, and I come to say that your bill will not affect me in my business in any way directly, but that we believe that the bill is monopolistic; we believe it is paternalistic; we believe it is not needed, and we believe it ought not be to passed.

Now, Mr. Chairman, I have taken up just as much of your time as I ought to take up.

Mr. FITZGERALD. Take the proposition of paternalism as it affects the working men. Your idea is that a person who feels that somebody is looking after him, and that he does not have to feel all the responsibility that persons ought to feel in struggling along in this world, has his initiative destroyed to some extent and, thereby, he ceases to be a forceful unit in the community? Is that your idea of paternalism—that is, that it has such a vicious tendency upon the people?

Mr. MONTAGUE. Yes; I think your bill carries into it the paternalistic idea. For instance, in section 7, it is provided that when an injury occurs the district insurance fund is to furnish such medical, surgical, and hospital services and supplies as the need of the injured may require. There you take charge of him immediately as a state proposition.

Mr. FITZGERALD. What I am trying to get at is your idea of what the objection to paternalism is, which I think you have very well expressed, and then I want to ask you this, as it affects the working man or the person in employment more or less hazardous: What difference does it make whether the Government reaches out and compels an employer to provide all of these things or whether the Government has a fund, a State fund or a district fund, and pays a man out of that so long as he gets the same treatment? Is it not paternalistic in both cases?

Mr. MONTAGUE. Do you mean where you pass a workman's compensation act?

Mr. FITZGERALD. Yes. In its very essense is not a compensation bill paternalistic?

Mr. MONTAGUE. No; not in the same way. The Government does pass many laws providing that people shall do this or shall not do that, but it leaves the field open to every man to engage in this business or that business and get his part of the business; it does not undertake to take over any kind of business, as a rule.

Mr. FITZGERALD. That is the monopolistic feature, but what I am talking about is the paternalistic feature. If the Government compels a workman to be protected either by an insurance company or by a State fund is there any distinction as between the paternalistic features of either plan?

Mr. MONTAGUE. I think there is; I think it is markedly different. My objection to it is the hooking up of the Government to all kinds of business, and if you can hook it up with the insurance business, which is not interstate, why may you not hook it up with other kinds of business which are interstate, or, at least, much of it?

Mr. FITZGERALD. But it seems to me you are getting the monopolistic features of this mixed up with the paternalistic features.

Mr. MONTAGUE. You admit it is monopolistic?

Mr. UNDERHILL. It is a function of the Government to protect its people but it is not a function of the Government to go into business.

Mr. MONTAGUE. But in these later days we are stretching over; we are stretching over and getting into matters which 100 years ago our fathers would never have permitted of getting into, and we have gone a little further and a little further until the Government has broadened itself out and is doing a great deal of business.

Now, the fraternalists supported the war insurance and thought it was all right; we went that far and no further, and no further will we go, because we feel it is an entering wedge; that is what we feel, that it is an entering wedge into this insurance business and that it will destroy our fraternal system. You may say, "You are all wrong about that." But the National Fraternal Congress for the last three years has at each annual meeting, representing 92 of these fraternal societies, passed a resolution against this and every other form of State insurance, and on that platform, Mr. Chairman, we stand. We represent the voters of this country in large measure and if, after deliberating and considering our position in the matter, we come to that conclusion then it is our business to come and tell the public representatives of our people, whether in the States or in this Capitol, what we want and what we do not want. I respectfully ask that you give very careful consideration to this measure before you enact it into law for the District of Columbia.

Mr. FITZGERALD. On the proposition of the highly technical character of the reserve, the surplus, and the premiums to be assessed, do you know offhand whether or not the Ohio State fund started in the same way?

Mr. MONTAGUE. I know they have a State fund.

Mr. FITZGERALD. I know they have accumulated millions of dollars in surplus and reserve, but I was wondering whether or not they started without any capital stock, as it were, that is, any large amount set aside to start it off.

Mr. MONTAGUE. I do not know what the original appropriation was, but I see that here it is $50,000. You do provide for adequate reserves, you do provide for a surplus, and you do provide that the commission may, in any case, open up an original claim, increase it, etc. Now, it seems to me that of itself is a feature which destroys the real permanency of an ascertainment of a premium rate and puts it into uncertainty. I have checked this bill, and there are many features that I might suggest to you gentlemen, but I am not going to do that.

Mr. FITZGERALD. If you have any other ideas in connection with this bill the committee will be very glad to receive from you a memorandum as to any part of it.

Mr. MONTAGUE. I do not want to take your time for the purpose of going into the details of this measure because I am sure these people will go into them. I am just here and in the most respectful sort of way am telling you the position I occupy, hoping that that position in the fraternal world is such as to receive some consideration at your hands.

Mr. FITZGERALD. If Mr. Duffy, of Ohio, is here, we will now hear him.

STATEMENT OF MR. T. J. DUFFY.

Mr. DUFFY. Mr. Chairman, before I continue, may I inquire how much time I will have?

Mr. FITZGERALD. We aim to give you as much time as is necessary to cover the field. I think Father McGowan is here, and Mr. Jones, and I do not know how much time they have in mind to use. Mr. Jones says five minutes, and if possible we will hear Father McGowan for a little time.

Mr. DUFFY. Mr. Chairman and members of the committee. Following the example of the gentleman who preceded me, I might say that I am chairman of the Industrial Commission of Ohio. It will be 10 years next July since I was appointed to the first board that was established to administer the workman's compensation law in the State of Ohio, and I have been in continuous service, devoting my entire time to that work.

I hope that the members of this committee and the Members of the House and Senate of the United States in passing upon this bill will look through the smoke screen of prejudice and mere mawky sentiments that we find presented, for no other purpose than to mislead concerning the merits of this proposition.

First, let me take up the question of its practicability, because, when this measure was before us in Ohio, back in 1911, we were told that it was impossible for the State to achieve success in the establishment and administration of a State insurance fund. We have now had that for nine years; two years of that time the law was administered as an optional law, it was not compulsory, and during that time we had to encounter the strenuous opposition of the insurance companies. According to their own statements they had at that time 6,000 agents in the State of Ohio who were soliciting employer's liability insurance and doing other work incident to the carrying of that insurance. At every turn we met these 6,000 men, and through misrepresentation, perhaps honest from their viewpoint, and through every energy that they could exert they attempted to prevent the success of this socialistic theory, as they termed it. Now, then, what has been the result? During that time we have collected, in round figures, $67,000,000.

Mr. UNDERHILL. What did you start with?

Mr. DUFFY. The law first went into effect March 4, 1912, and the compulsory law January 1, 1914.

Mr. FITZGERALD. Mr. Underhill asked you how much money you started with.

Mr. DUFFY. Not a cent. We had the task of getting somebody to come across and pay these first premiums into an empty fund; there was not a cent appropriated for what you might call working capital.

Mr. FITZGERALD. The reason we are interested in that is because it has been very ably argued before the committee that it is very foolish and unbusinesslike to start with only $50,000, because the insurance companies have to start with capital stock and a surplus, and that the fund is likely to be depleted promptly and bring the whole thing into contempt.

Mr. DUFFY. I would not say it is wise to start without any capital at all, but I would say that $50,000 should see it through, because there is this to be considered: You collect your premiums in advance; your compensation is paid out in weekly, biweekly, or monthly installments, and during that time you are collecting premiums, and you have an opportunity to work out your problems from an actuarial standpoint.

Mr. UNDERHILL. Do you know how many subscribers you had originally?

Mr. DUFFY. Of course, we had none when we started; we had to get them.

Mr. UNDERHILL. But you say that when the compulsory law went into effect——

Mr. DUFFY (interposing). I could not give you the exact number when the compulsory law went into effect, but we probably had less than a quarter of a million dollars in the fund at the time the compulsory law was passed, but we had probably $1,000,000 or more at the time it went into effect. Of course, some of that was probably paid in because it was seen to be inevitable that they had to come in on a certain date and some got in before that time. Now, then, at the present time we have what might ordinarily be called a balance of about $37,000,000 which, of course, is subject to all the obligations for pending claims, reserves, etc.; it would probably take between $31,000,000 and $32,000,000 to pay off all the obligations now outstanding, so that there is approximately $4,000,000 or $5,000,000 clear of all obligations. We have on two occasions in the past given rebates; in one instance they amounted to $1,200,000, and the probabilities are that on the coming July 1 there will be a rebate of between $2,000,000 and $3,000,000. Now, last year our fund earned in interest——

Mr. FITZGERALD (interposing). The rebates to which you refer represented a return to the manufacturers and other subscribers?

Mr. DUFFY. Yes; all the subscribers to the fund who participated.

Mr. UNDERHILL. In the meantime the society has borne the expense of this thing?

Mr. DUFFY. No; I would not say the society has borne the expense, but out rates, at that, have been probably 50 and 60 and not more than 75 per cent of what the insurance companies are charging in other States where the obligations under the law are not any greater than in Ohio.

Mr. UNDERHILL. But the taxpayers paid for the administration?

Mr. DUFFY. Yes; as they do in all other States.

Mr. F. R. JONES. Not all of them.

Mr. DUFFY. What States do not pay for the administration of the workmen's compensation law?

Mr. F. R. JONES. In New York the insurance carriers pay the cost of administration.

Mr. DUFFY. The insurance carriers pay the expense?

Mr. F. R. JONES. They do.

Mr. DUFFY. They pay a proportion of the expense.

Mr. F. R. JONES. They pay the entire expense.

Mr. DUFFY. I say that is not so.

Mr. F. R. JONES. As far as compensation is concerned.

Mr. DUFFY. Oh, no; they have a State fund.

Dr. ANDREWS. That is by more recent legislation.

Mr. F. R. JONES. About three or four years ago.

Dr. ANDREWS. Two years ago.

Mr. DUFFY. I intend to take up many of these points, but I do not want to get on them now.

Mr. FITZGERALD. You might let him go on, Mr. Jones, and not interrupt.

Mr. DUFFY. This is a problem in which society is interested, and any workmen's compensation law which you impose is an additional burden on society, and the thing that brought it about was the necessity to do justice to an individual who received an injury in

the course of employment and to relieve society of a condition that was a greater menace to American institutions than any governmental function can ever be, and in passing such laws a great burden of expense was taken off of the courts. Now, an attempt is being made, not only here but throughout the country, to show that you are taxing the people of the States when you ask them to contribute the cost of administration. The employer pays his part; labor pays its part; and the State, in Ohio, is only asked to contribute the equivalent of 3 per cent of the earned premium collected, and if there is any man whose patriotism is not willing to contribute 3 per cent to help solve a problem such as this, then I do not care to be put in that class of patriots.

Mr. FITZGERALD. Have you any figures showing how much the State saves by the elimination of all the court controversies and troubles? Has such an estimate ever been made?

Mr. DUFFY. That has never been estimated; an attempt was made, but you may remember that in the State of Ohio, just about the time this went into effect, there was a redistricting of the courts, and that so complicated the matter that it is very difficult to figure out and have any figures that could be reliable.

Mr. MONTAGUE. Mr. Chairman, may I ask him if the cost of court administration has decreased since that law went into effect, or does that law actually affect the expenses of the courts?

Mr. DUFFY. The cost of the courts remains about the same, but the congestion in the courts is greater. The reason for that is that there has been an increase in the other business of the State. That has been growing, but since that time the courts have not been increased. I am speaking of Ohio, and I do not know about the other States. For the calendar year 1920 our fund earned $1,400,000, and the cost of administration during that time was approximately $375,000. Therefore you can see that the interest alone is no child's figures, but it is more than three times the equivalent of the cost of administration. For the present year that earning will run to probably $1,750,000. During that time, just as a mere incident in connection with this, we have purchased in the State of Ohio $43,000,000 worth of municipal bonds, road bonds, school bonds, etc. Most of those bonds were purchased under conditions where the banks were unable to take the bonds, as during the war period and during the present period when money is so scarce. That $43,000,000 was used to improve the roads of the State, and to build schoolhouses for the State, and to give employment to the people engaged in that work. Had it been an insurance company, that money would have gone to New Haven, New York, and, perhaps, some of it to Europe. That, however, has nothing to do with the principle, but it is probably an item that is worthy of consideration from the standpoint of statesmanship.

Mr. UNDERHILL. All of it is exempt from taxation?

Mr. DUFFY. Yes, sir; they are tax exempt.

Mr. UNDERHILL. You must have taxes in order to carry on the business of the Government.

Mr. DUFFY. It is not customary for the Government to tax itself, is it?

Mr. UNDERHILL. No; but if it takes over all lines of business, where will you get your revenue?

Mr. DUFFY. Let me ask you a question there. I am one of those who is opposed to the Government taking over all lines of business, and I am also one of those who does not think that this Government is so weak that the closer it brings the individual citizen in touch with the Government the more jeopardy the Government is placed in. I would much rather that the Government should provide the fund to take care of these victims of industrial accidents, and thereby show them that they can trust the Government to do justice, than to have the Government turn them over to a private agency which will take advantage of their unfortunate condition and make a profit out of their misfortunes, implanting in their hearts a hatred of the Government which they now love.

Now, you say that is socialism. If I can not show you the contrary by argument, then I am willing to give way on this to you. There is not anyone who contends that he has any natural right to write either workmen's compensation insurance or employers' liability insurance. That is something that does not exist as a natural right. Wherever workmen's compensation insurance exists or wherever employers' liability insurance exists it exists because a proper legislative tribunal has passed a law imposing that obligation upon the employer, and conferring the right upon the injured worker to that benefit. Now, when the State does that it does it as a matter of public policy. That being true, how can it be said that when a State brings into existence such an insurance as a matter of public policy to take care of a public need, such business should be left to private enterprise rather than to public control? I am not now speaking of that public policy which regulates or restricts a business that has already been brought into existence and which naturally needs regulation, but I am speaking of that public policy which gives life and being to something that does not exist without legislative enactment. The manufacturing business and agricultural business exist because they supply the natural needs of man. The same thing is true with regard to life insurance, general accident insurance, and fire insurance, because there would be a need for those things if there were no law regulating them or regarding them. Do the employers want their business put upon the same level as employers' liability or workmen's compensation insurance? That would be shallow reasoning.

Mr. UNDERHILL. What positions have you occupied?

Mr. DUFFY. At the present time I am a lawyer, in addition to being a member of the commission; for 10 years I was president of a labor organization, and have also been a bank director. Fortunately, I can say that I can brush shoulders with people who are, perhaps, in the millionaire class, and I can brush shoulders with those who are away down in the scale, and they do not look any different to me. I have the same respect for each of them, so long as they have the right qualities of manhood. Let me finish that point: In 1918 we made a comparison, and in doing so we went to considerable trouble. We took our risks, or the same risks that we had collected premiums on, and we took the New York manual and applied it to those risks, and, as you may see by the published reports, we found what the result would have been if we had been charging the employers of Ohio the same rates as the insurance companies charged the employers of New York. We found that if we had done that,

we would have collected $6,782,278.59 more from the employers of Ohio. Now, I believe that it is not at all impertinent to say that we should expect our legislatures, whether State or national, to show foresight and wise statesmanship in the passage of any law.

Now, let me just call your attention to this, and, in doing so, I only want to go back to September of last year, in order to answer some arguments that have already been advanced here: We were told as late as last September that the problem of this Nation was the problem of production; that the laboring people were not producing sufficiently and that there was a scarcity of necessary things, and it was argued that because of our inability to get things they had to charge exorbitant prices. Now, then, we go on for about three months, and come to the present day, when we have in this country between 3,000,000 and 4,000,000 people thrown out of employment. There is all the waste incident to their lack of employment; they are not producers, and society is suffering from that condition. The point I am making is this: To take an illustration, society, or the industrial end of it, may be represented as an inverted pyramid, and the more nonproducing factors you put upon that inverted pyramid the heavier the burden is upon the labor at the bottom of the pyramid, consequently, the less you have to give to the producers, because it is being absorbed by the nonproducing factors. Now, then, if the employers of Ohio, or, as Mr. Hooks shows in his report, the employers of the Nation, have $30,000,000 or $40,000,000 that they do not need in the production of the necessities or the necessary commodities of life, then let us put that into the pay envelopes of the employees rather than into the coffers of insurance companies. I submit to you that it would do far more to instill patriotism and love of America in the hearts of the laboring people than would be the case if you gave that $30,000,000 or $40,000,000 to a factor that does not add one iota to the necessary service of the country.

Mr. UNDERHILL. You are speaking about the nonproducer, but the more Government operation you have, the more nonproducers you will have. As you take men from industry, from trades or professions, and put them on the Government pay roll, you are making nonproducers. Is it not fair to assume that the clerks, solicitors, and other employees in connection with the insurance business are as much entitled to make a living and to receive some benefit from this $60,000,000, $70,000,000, or $80,000,000 as any other class of people in the community?

Mr. DUFFY. They are just as much entitled to their pay as anyone else if they work for it. If they earn their pay it is just to give it to them, but can we, from the standpoint of American statesmanship, stop at that point? Should we not consider the question of whether or not we shall select the most expensive method or should select the least expensive method?

Mr. UNDERHILL. That is a question of opinion. According to your previous statement, you would be in favor of the Government running the railroads or transportation systems, the farms, and everything that enters into the absolute necessities of life.

Mr. DUFFY. Not at all.

Mr. UNDERHILL. You could not stoop, or you could not make any line of demarcation there.

Mr. DUFFY. With all due respect to you, let me say this, that that is the fault of those who are opposing a measure of this kind. To use a common expression, they can not see why within a year or two after a measure of this kind is adopted we shall not have an overwhelming wave of socialism that is going to absorb all of the business of the country. They told us that in Ohio 10 years ago, and there is less socialism in Ohio to-day than there was 10 years ago. I defy a contradiction of that statement. There are certain things that it is proper for the Government to do. For instance, let me take up this proposition of monopoly.

Mr. UNDERHILL. Right along that line, you believe in a Government monopoly of the insurance business in Ohio?

Mr. DUFFY. I certainly do.

Mr. UNDERHILL. And the people of North Dakota and some out in Minnesota believe in a Government monopoly in grain elevators, banks, and all that sort of thing. The people of Massachusetts might believe in a Government monopoly of something else, and so on through all those things until we will find that, perhaps a large part of the people believe in Government ownership or in Government monopoly. If we should continue along all those lines and listen to all of those people, we will have a socialistic form of Government, and, perhaps, by and by we will become Russianized.

Mr. DUFFY. No, sir. You and I are aiming at the same thing, but I believe that your methods will more certainly lead to socialism than those I propose. If you could have your way, and I do not mean that disrespectfully——

Mr. UNDERHILL (interposing). Go as far as you like.

Mr. DUFFY. If you could have your way, you would have socialism long before you would have it under my method.

Mr. UNDERHILL. You and I both will be dead before that time, I hope.

Mr. DUFFY. Probably so. Now, let us take it from this standpoint: Here is this argument about monopoly from the lawyers who are present, and I might ask them this question: Do you know of any State function that is not monopolistic? Do you know of any State function or a strictly governmental function that is in competition with any private agency? About the only thing I can think of is the parcels post service in competition with the express companies. That is the only thing. Now then, I say this, that I am opposed to the State entering into competition with private enterprise. I believe that the State should only take on any business which by its very nature should be a monopoly, and where it is a proper function for the State. If you will go back to the old feudal system, you will find that the man who held an estate, because of his holding of the estate, had certain judicial powers.

The State has a monopoly of judicial power now, and there is nobody who would be willing to put judicial power into private hands to-day. Let us go back, for not so many generations either, and you will find that governments farmed out the collection of taxes. The laws provided for the collection of taxes by private enterprise which derived a profit from it, but we know that no American citizen would stand to-day for the proposition of farming

out the collection of taxes by private interests that would derive a profit from them. Take the public school system, and that is a monopoly of a kind. You and I are compelled to contribute to the school fund, although, of course, we have the right to build private schools and maintain them at our own expense. That, however, does not exempt us from our compulsory contribution to the public school funds. Why is that? It is because we have decided that schools are necessary for the preservation and perpetuity of the institutions of our Government. This is upon the same principle.

Mr. UNDERHILL. But you do not say that a person shall not carry on a school or university as a private enterprise and at a profit, nor can you contend that we do not have the privilege of sending our children to a parochial school or any other school we see fit.

Mr. DUFFY. No, sir; I do not say that, and if the employer wants to give the workingman from fifteen to twenty-five dollars per week over and above what this law gives him, he can do it. If he complies with this law, he can do anything over and above that if he wants to—that is, it he wants to do it in addition. He has to show that he has complied with the law, but anything that he wants to do in addition to that, he is free to do.

Mr. BRASHEARS. May I ask the gentleman two questions in regard to the State fund in Ohio?

Mr. FITZGERALD. Yes.

Mr. BRASHEARS. He told us a moment ago that the premiums collected would have been several million dollars greater if they had been charged in accordance with the New York standard, and he arrived at that by a comparison between the Ohio rates and the New York rates. Now, I am curious to know whether he examined all of the Ohio risks in arriving at that figure.

Mr. DUFFY. Yes, sir; all of our Ohio risks were examined.

Mr. BRASHEARS. You reached that according to the New York rate, and found that they were all rated in accordance with the New York rates?

Mr. DUFFY. Yes, sir.

Mr. BRASHEARS. Did you take into consideration the contribution of those risks necessary to be made to the New York fund to carry the expense of the fund, which in Ohio is carried from taxes?

Mr. DUFFY. Yes, sir; that was all considered. I think the insurance companies had copies of that pamphlet.

Mr. BRASHEARS. Despite that, you did not know that New York required a contribution?

Mr. DUFFY. Yes, sir; I knew there was some contribution required, but the contribution does not cover the cost of administering the law.

Mr. BRASHEARS. No; but the Ohio taxpayer provides an independent fund.

Mr. DUFFY. I think I have given the reason why I think that should be.

Mr. BRASHEARS. One other question: Do you know what contribution the State of Ohio lost by reason of the failure to collect taxes from private companies that might have been engaged in the writing of those policies—that is, for every premium collected the State of Ohio would have received revenue in the form of taxation upon

that collection. Now, the moneys that are paid into this insurance fund are exempt from taxation. Have you made any computation to see how much the State of Ohio loses by reason of those taxes going into a State fund instead of going where they would be subject to taxation?

Mr. DUFFY. I never had reason to look into that.

Mr. BRASHEARS. Of course, you realize that the companies' rates would be much higher of necessity—that is to say, the addition of the taxes would make the rate higher.

Mr. DUFFY. Yes; as much as that would add. I concede that as self-evident.

Mr. BRASHEARS. There is one other question: You are sufficiently familiar with this bill to know that the expense of the insurance fund designed for the District of Columbia is to be paid out of the contribution of premiums, with but a small exception.

Mr. DUFFY. I am not interested in that phase of it. That is a matter of detail for the people here.

Mr. FITZGERALD. Mr. Brashears, I suppose you understand, as the Ohio reports indicate, that 35 cents of every dollar paid in for workmen's compensation goes to the insurance companies in the form of overhead expense, etc., whereas under the Ohio law, that expense has been figured to be 2 per cent or less. There is an enormous difference there, and I would be interested in any brief you might submit in regard to that. I would like to have you show what a considerable portion of that amount of almost 33 per cent is taken up for.

Mr. BRASHEARS. There are two items that I have in mind: One is the item of expense which the insurance company carries, and the other is the item of taxation. I am not sufficiently familiar with the Ohio situation to know about that.

Mr. DUFFY. Let me answer that in this way: Without going into all those details, I will say this, that making allowance for all of those factors, with the State fund administered as it is in Ohio, to put it in a small way, will save the employers at least 40 per cent.

Mr. FITZGERALD. Do you consider the State law of Ohio superior to that of any other State?

Mr. DUFFY. Making allowances for modesty, I will say that I do feel that way about it.

Mr. UNDERHILL. Can you tell me how many other States exempt employers, firms, or individuals, where they do not employ more than five?

Mr. DUFFY. I do not know how many States do that. That is a defect in the Ohio law.

Mr. UNDERHILL. In many States they do not exempt them.

Mr. DUFFY. They should not be exempted.

Mr. UNDERHILL. Consequently, their expense must be more. A man's leg, arm, foot, or eye is of just as much value to him when he is employed by a man employing less than 5 men as when he is employed by the employer of 1,000 individuals.

Mr. DUFFY. We do not ask you to take anything in the Ohio law that is not good. There is one thing that I want to leave in your mind in connection with this monopoly proposition, because I see how much that is being played upon. What is a monopoly in the

odious sense? It is a privilege or combination which permits those who control the privilege or combination to exact exorbitant prices from the consumers and make excessive profits for themselves. What is the object of the State in connection with this insurance? It is for the purpose of preventing anybody from making any profit out of the misfortunes of laboring people. When anyone says that he can not see any difference between those two kinds of monopoly, and when he says that one is just as odious as the other, I can hardly believe that he believes what he says. They say that we must have competition in order to succeed, but we have got competition. The competition of the State acts as a regulator of the rates of private insurance companies.

Let us take the experience they have had in New York, going to Mr. Baldwin's reports of three or four years ago, which show that no matter how much competition there may be between insurance companies themselves, they are all united in opposing State funds. They are united in that. They want to be clear of competition with State funds. As to the need of competition, let me say this: I was a little timid about it 10 years ago, or eight years ago, or five years ago, but, as you know, when you once penetrate through some things, you find that there is not nearly as much mystery about them as you at first supposed. They told us what an abstruse proposition it was; how impossible it was for us to learn it, etc. Well, the insurance men have educated me. They put me up against the wall time and time again, and, so to speak, they beat it into my mind and heart, and I thank them for that. You talk about your competition, and I want to say that while we have made mistakes and know that defects can be found in our system, we are willing to put it up against anything you can produce to see whether or not it makes a better showing than Ohio has made. We have not had any competition for eight years, although we have had opposition. You can come into our office any day unannounced, or can sit there in the hearing room and listen to some poor widow presenting the case of her husband, or the cause of his death. You may find children there or some poor crippled men who have lost, perhaps, both hands, one leg, an arm, or an eye—all waiting there to have their cases disposed of. Then, in the medical department, you may see a line of people, some on crutches and some with their arms in slings, and you will see them there day after day. If that is not sufficient to make you exert the best in your mind and heart, without the competition of insurance companies, then you have got a mind and heart different from my own.

Mr. NESBIT. I would like to ask what time elapses in Ohio, on an average, between the filing of the claim and the payment?

Mr. DUFFY. At the present time about 15 days in 95 per cent of the cases.

Mr. NESBIT. What was it last year?

Mr. DUFFY. About 35 days.

Mr. NESBIT. Has it not run as high as 55 days on an average?

Mr. DUFFY. No, sir; not 55 days.

Mr. NESBIT. As much as 50 days?

Mr. DUFFY. No, sir. It might be from the time of the injury, but not from the time the application was presented.

Mr. UNDERHILL. Do they have to appear before the board in person?

Mr. DUFFY. No, sir; they have that privilege, but they do not appear in one-tenth of 1 per cent of the cases. As an illustration, we will have, probably, 550 cases before us to-morrow morning, but out of those 550 cases there will be not more than 30 that will require personal attention on the part of the commission, because there are no disputed points in the cases.

Mr. UNDERHILL. Do you send members of the board to hold hearings?

Mr. DUFFY. We have referees who conduct hearings over the State.

Mr. UNDERHILL. The commission holds hearings?

Mr. DUFFY. Yes, sir; whenever it is necessary. Of course in 99 per cent of the cases no hearings are necessary, but they are simply worked out. The working man makes his application for compensation; the employer verifies the facts; the doctor makes his certificate; and, as I have said, in 99 per cent of the cases, that is all there is to it. Of course that 1 per cent of cases gives the commission and the legal forces plenty of work to-day.

Mr. BRASHEARS. You do employ a lawyer in connection with the department?

Mr. DUFFY. I suppose there are 12 or 15 lawyers in the department. They are not employed as lawyers, and I would not say that that adds at all to their efficiency. In addition, during that time we have had in the neighborhood of 1,000,000 claims allowed, or a little less than 1,000,000. There were not 1,000,000 claims allowed, but at the first of the year I think there were about 64,000 disallowed claims out of that 1,000,000. There were approximately 4,000 deaths in that number. Of course a good many of those claims are minor claims that would call for nothing more than medical attention.

Mr. MONTAGUE. Have you a certain percentage set aside for the running expenses of the department?

Mr. DUFFY. We are subject to what the legislature appropriates. This is not taken from the fund at all, but it is appropriated from the general funds of the State.

Mr. MONTAGUE. I judged that from what you said just now, because you said that the time had been when the investigation of claims had been hampered or interfered with because of the failure to appropriate. Of course, if the State does not appropriate, you can not work.

Mr. DUFFY. Mr. Chairman, I do not want to take up any more time unless there are questions to ask, but in concluding I would say this: I believe that representing, as you do, the United States, even though you are making this law for the District of Columbia alone, it is important that you weigh well what you are doing, and as I have already intimated, I am one of those who believes in the present system of society. Take the illustration I have used. I believe this system of society is a pretty good horse; I believe this horse is capable of carrying a good load, and that it will carry that load for a long time if it is given fair treatment, and I want this horse given fair treatment, because I do not want it to be broken down. But I say that these insurance men, in matters of this kind, try to impose such a burden upon this horse that it can not bear it, and they are going to break

it down, and they have not any idea as to what kind of a horse is going to take its place. In other words, I believe that an insurance company is an unnecessary factor in the administration of a workman's compensation law; that it is to the best interests of society, it is the desire of the laboring people, and in Ohio it is the desire of 90 per cent of the employers not to have the insurance companies in.

To the gentleman from Virginia, who speaks for the fraternal organizations, I say to him that I am willing to submit the proposition of whether or not the insurance companies shall be permitted to operate in Ohio under the workman's compensation law to his own fraternal organizations, and I will guarantee that there will be at least 75 per cent of them, and maybe a greater proportion, who will vote against the insurance companies coming in. The American Federation of Labor does not speak for all the laboring people of this Nation, but it has more right to come here and say that it represents the laboring people than any other organization in existence. After a study of this question at its last convention, the American Federation of Labor selected the Ohio law, principally because of this insurance feature—selected that over all the other compensation laws in the Nation and in the world, and recommended that as the model law for adoption by the various States.

Mr. UNDERHILL. The American Federation of Labor also says that men shall not work in industry unless they have their visé.

Mr. DUFFY. Oh, no; they do not say that any more than the employer simply says the same thing if he does not want to employ a man.

Mr. F. R. JONES. But two negatives do not make a positive. [Laughter.]

Mr. UNDERHILL. If my boy wants a job he must have the sanction of the American Federation of Labor before he can take the job.

Mr. DUFFY. Of course, I do not know that it would be proper, but I would be very glad to argue that with you. But let me say this: That the stand which the American Federation of Labor has taken in that respect is due to the fact that those who control the jobs have not felt under any obligation to provide employment for suffering, starving people. As things are constituted to-day, with our big corporations controlling the natural resources and all the avenues of employment, the individual workman has not any more chance to get justice, standing alone, than I have of lifting myself up to heaven by getting hold of my boot straps.

Now then, in order that some of them, and not all of them, may get the opportunity to get a job, they have banded together for their own protection. What caused it in the first instance? John Jones, running a shoe factory, had a man working for $1 a day; John Smith had him working for $1.25, making the same kind of shoes. John Smith calls his men in and says, "I can't compete with Jones; he is paying his men $1 a day; you men have got to come down to $1 a day." And there was not one individual there that could stand alone and say, "No," and they all went down. Now, I know this is not proper here, but the question has been put to me, and if you want to get at these things you have got to go deeper than the stand of the American Federation of Labor for the union shop or the stand of the employers for the misnamed open shop, which is a closed shop, and any man with real ability and any man with the independence that a

true American citizen should have can not get a job in that so-called open shop. Now, what has been the result? The man who has had the independence that John Adams had and that Thomas Jefferson had banded together with those who were suffering in the same way that he was suffering, and they tried to get some relief from their oppressed condition.

Mr. UNDERHILL. Then you think the Government ought to provide employment for everybody who is out of employment?

Mr. DUFFY. Not as an employer, but the Government should see to it that those who control the natural resources of this Nation and the avenues of employment shall fully measure up to that responsibility and give employment to the people in order that they can get the bread that they need to keep life in their bodies.

Mr. UNDERHILL. Then you believe absolutely in the Kansas law?

Mr. DUFFY. What? The industrial court?

Mr. UNDERHILL. Yes.

Mr. DUFFY. Not at all, because it does not do that.

Mr. UNDERHILL. That is what it is supposed to do.

Mr. DUFFY. That is what it is supposed to do?

Mr. UNDERHILL. Yes.

Mr. DUFFY. Well, I will not argue that with you, but do you believe in it?

Mr. UNDERHILL. Yes; absolutely.

Mr. DUFFY. Then you believe in the Government doing that which is a hindrance to the laboring man but not that which is a hindrance to the employer?

Mr. UNDERHILL. I believe that if the Government can eliminate strikes and lockouts it is performing a service for 90 per cent of the people of this country.

Mr. DUFFY. All right.; let us take the Kansas law. The Kansas law says that if a laboring man or a group of laboring men want $5 a day that that shall be determined by the Government, whether or not they shall get the $5 a day. That is what the Kansas law says, does it not?

Mr. UNDERHILL. No; it does not say that. It says that if they go out on a strike or contemplate a strike it shall be submitted to the industrial board.

Mr. DUFFY. No; they have to submit it before they go out on a strike.

Mr. UNDERHILL. Yes; and then they adjudicate what price they shall have.

Mr. FITZGERALD. This argument is very interesting, but I would like to have it stop some time.

Mr. COLUMBUS. May I ask a question? Who is the witness representing, and is he a resident of the District of Columbia?

Mr. FITZGERALD. He was invited here by the chairman as the greatest expert in the practical application of the Ohio law.

Mr. BRASHEARS. I would like to ask him whether he is opposed to mutual competition?

Mr. DUFFY. No; I am not opposed to it, but I think you will agree that if you have a State fund there is no need of it, not in your judgment, but there might be in the judgment of some people. I do not think it is necessary to take up any more of your time.

Mr. FITZGERALD. I might say to some of those who have so ably presented the propositions of paternalistic and monopolistic features, etc., that I would welcome, and I think the same can be said of Mr. Underhill, any reference to any scientific work or any brief that can be prepared which will, in the first instance, discuss scientifically the dangers of paternalistic or monopolistic insurance as applied to this particular phase of the matter. Is Mr. Jones here? If so, we would like to hear from him in regard to local matters.

STATEMENT OF MR. THOMAS H. JONES.

Mr. FITZGERALD. You may state whom you represent.

Mr. THOMAS H. JONES. I represent the engineers of the District of Columbia.

Mr. FITZGERALD. That means the stationary engineers?

Mr. THOMAS H. JONES. Yes. I just want to say this: That we indorse this bill as it is; we believe that it is one of the best bills that was ever drafted, and we indorse every feature of this bill. I might talk for an hour or so but I could not say any more than what I have said in these few words, but I want to cite you a couple of cases, one in the District of Columbia. About 12 years ago I happened to be chief engineer at one of the largest department stores here. They had just finished or were about finishing the putting on of an addition. The bricklayers had finished their work in the upper stories and they got down to the engine room, and there was a wall to be laid around the elevators. The busy season of the fall was approaching and it was necessary to operate those elevators.

I took the superintendent of construction and two bricklayers down into the engine room and showed them this wall, and told them that it was absolutely necessary to operate those elevators on account of rush of business and that they could not be shut down. While this wall was being put around the elevators the men stood on the outside and laid brick within five or six inches of the elevators that were being operated. Those men assumed that risk. They commenced laying brick, and about two hours afterwards I presume one of the bricklayers must have dropped his trowel under the elevator, between the wall and the elevator, and thoughtlessly—he was warned of the danger before—he looked over to see where the trowel had dropped, and the elevator caught him across the head. That man laid in the hospital four months and to the present time he has never been able to lay a brick. I have heard recently that he has some job as a watchman somewhere. He sued for $30,000 damages. The case came before the court but the man never got a cent. Good old Judge Clabaugh, who is dead now, announced from the bench that this was one case that he would have liked to give a man some compensation for injuries, but on account of the laws that had been cited by the lawyers of the insurance companies this man, when he went down there, after being warned, had assumed the risk and he was not entitled to a cent, and that man never got a cent.

Mr. UNDERHILL. Under a workmen's compensation act he would have been reimbursed.

Mr. THOMAS H. JONES. He would have gotten a little less from the insurance companies; they carried the accident insurance.

Mr. UNDERHILL. While there have been cases where insurance companies have been mean enough and contemptible enough to try and squeeze out the last dollar, I think you will find other cases where they have been liberal and where they have been perfectly fair. That is very true in mutual insurance and in self insurance, because a man under self insurance has some interest, presumably, in his employment. I merely make that observation because so much has been said along that line, but nothing has been said on the other side. I know of hundreds of instances where under mutual and self insurance men have gotten a great deal more than they would have gotten under any form of casualty insurance.

Mr. THOMAS H. JONES. Well, this case I know of, as it came under my personal observation.

Mr. UNDERHILL. It is a crime against civilization when those injured in that way are not compensated.

Mr. THOMAS H. JONES. Yes; that man should have had something, but he got nothing. I have accumulated a list of men injured in the past two years. These are men who drive bakery wagons. I have a list of 19 men who were injured while driving bakery wagons. For instance, Thomas C. Fox, hurt by Merchants' Co. machine. He drove a bakery wagon, and one of these merchants' parcel delivery machines ran into his wagon and injured him. Thomas Ryan, kicked by a horse and leg broken; J. H. Jenkins, cranking machine, arm broken; J. T. Rane, cranking machine, arm broken; R. E. Donaldson, cranking machine, arm broken; J. H. Hummer, cranking machine, arm broken, etc. I might go on and give the different kinds of instances, but I will just submit this list to you. There was one man in this lot of men who received $800 for his injuries, a man by the name of Freedman. He was very seriously injured, and they compromised it for $800 and promised that he should have a steady job. He went back to work after his recovery and then a short while afterwards he was dismissed.

Mr. UNDERHILL. In all of these 19 cases were there none where the employers took care of their men?

Mr. THOMAS H. JONES. No, sir.

Mr. UNDERHILL. Or showed them any consideration?

Mr. THOMAS H. JONES. None at all.

Mr. UNDERHILL. They just laid them off?

Mr. THOMAS H. JONES. No; after they recovered they went back to work. I would not say that.

Mr. UNDERHILL. I thought you said this man was laid off.

Mr. THOMAS H. JONES. Well, he was given $800 and promised a steady job, but after he had been back a short while they laid him off.

Mr. UNDERHILL. And they did not pay him anything?

Mr. THOMAS H. JONES. No, sir.

Mr. UNDERHILL. I do not think much of the Washington crowd, then.

Mr. THOMAS H. JONES. It is hard, and I could give you statistics as to the number of injuries that have happened in the District of Columbia. I would have to get them up, because there is no record made of them; there is no report made, but I just happened to get hold of this number. I think it has been acknowledged by every one

in the room that compulsory workman's compensation is a good thing, and that they indorse it. It seems to be just a question of whether we are going to have it monopolistic or whether we are going to have the insurance companies of the country do this work. I believe that the working people would have a better and fairer chance, and be more liberally taken care of, by this bill than if it were administered by the insurance companies, because I know that insurance companies are in business to make money; we all know that, and if they can settle a claim for $100 they are sure to do it, although according to the injury, and one thing and another, the man might be entitled to recover a great deal more. I do not know that I can say any more, but we are in favor of the bill as it is drawn.

Mr. UNDERHILL. Do you know the names of the employers of these men?

Mr. THOMAS H. JONES. I could get them for you.

Mr. UNDERHILL. I wish you would. I would like to know about them.

(The list of men injured follows:)

WASHINGTON, D. C., *May 14, 1921.*

LIST OF BAKERY-WAGON DRIVERS INJURED IN THE PAST TWO YEARS.

Thomas C. Fox, hurt by Merchants' Co. machine.
Thomas Ryan, kicked by horse, leg broken.
J. H. Jenkins, J. T. Rane, R. E. Donaldson, J. H. Hummer, and Wm. Terry, cranking machine, arm broken.
A. J. Freedman, wagon turned over on him.
A. Lupo, thrown under wheel of wagon when horse started.
J. Fitzgerald and H. Tate, hit by Washington Electric Railroad Co. machine.
R. C. Flora, fell from wagon.
P. James, slipped from wagon, leg broken.
W. J. Boyle, hit by machine.
W. M. Johnson, wagon ran over foot.
A. Goldberg, hit by wagon pole.
Steve Sembaski, fixing tire, jack slipped, hurt back.
C. M. Seates, cranking machine, arm broken.
H. G. Watterholter, slipped from wagon.
The only man to receive any money during injury was A. J. Freedman, who received $800 and the promise of a steady job, but soon after he returned to work he was laid off.

Mr. F. R. JONES. Mr. Chairman, Mr. Duffy has made certain statements during his address to which, of course, I take exception, and I hope Mr. Duffy will be able to be at a continuation of this hearing because I shall certainly take exception to certain statements that were made, but I did not want to interrupt him.

Mr. FITZGERALD. The committee appreciates that and you will find we are very anxious to get all views. If there are any matters which have not been brought out thoroughly we are very anxious to have the assistance of those who can point out the discrepancies.

Mr. F. R. JONES. I take it that I will be given an opportunity to say something with reference to what he has said, because I have a great deal to say about this Ohio law and a great many other facts, particularly with reference to the attitude of the employers in the State of Ohio right now with regard to this.

Mr. FITZGERALD. The hour for adjournment of the committee has necessarily been fixed by the convening of the House, 12 o'clock, but Mr. Underhill and myself are willing to run along for a half hour longer this morning, and I should like to hear from Father McGowan, who is here and who came specially to be heard this morning.

STATEMENT OF REV. R. E. McGOWAN.

Mr. MCGOWAN. I am a Catholic priest, and am assistant director of the Social Action Department of the National Catholic Welfare Council, which is an organization formed by the bishops of the United States. In coming here I wish to state that the social action department of our council—which is a department that concerns itself with social and economic movements, facts, and laws—is in favor of a workman's compensation law. We have not, however, gone on record in favor of any compulsory workman's State insurance feature. We have not done that because it is a matter of detail. I have been asked here, and was willing to come, particularly because I have been here at a previous hearing and had heard much talk about compulsory State insurance being bolshevism, socialism, and so on. I am rather jealous of that because I consider it merely a matter of detail. I do not think that any such thing as socialism, bolshevism, paternalism, or anything of that kind, should be injected into the controversy. I am not a socialist; I am a Catholic priest. am not a bolshevik; I am opposed to bolshevism; I am opposed to socialism; and I am opposed to any great system of paternalism in the United States.

But here is a question of detail; that is all it is. It is a question of better administration of the law; it is a question of how best to obtain the compensation features of this law and to give its benefits to the injured workmen. To bring in some hazy idea, to bring in some matter of the common ownership of all means of production and distribution in the United States, or to bring in such an idea as the ownership of all these things and have that produced by a revolution, to me appears small; it is, I believe, subterfuge, and I believe that firmly. I think it is merely a matter of detail, some way of trying to manage and trying to arrange for the payment of compensation to injured workmen.

Mr. UNDERHILL. Then you think the chief object to be attained is that of the relief of injured workmen?

Mr. MCGOWAN. That is the chief thing; yes.

Mr. UNDERHILL. And it does not make much difference whether it is done one way or another?

Mr. MCGOWAN. No. Some time ago I was riding on a train through Ohio. It was about a week or so after election, and we got to talking politics in the smoker. There were three or four young men there, and we were talking about one matter and another, and I suggested that I favored the income tax. I never saw men get so vociferous in my life; they said I was a bolshevik and that I ought to be put up against the wall and shot; but I found in the course of our conversation that they favored this compulsory insurance feature of the Ohio State law. [Laughter.] If we come right down to it, President Harding, who is a citizen of Ohio, may be in favor of the income tax, and if he is, according to the ideas of some of those men he is a bolshevist too. But I think all of that stuff ought to be kept out of this discussion and not injected into it.

Mr. UNDERHILL. I was president of the associated charities of my city for over five years, and I had a great deal to do with injured workmen. I found that we could go to the insurance companies and to the employers after the State board had made an award, which

was all they felt they could give under the circumstances, and over and over again we have gotten from the employers and from the insurance companies an additional allowance to the injured men.

Mr. McGOWAN. I have no doubt of that.

Mr. UNDERHILL. The reason I have been making some of these inquiries is to bring out the fact that the employers are not such devils as they are made out to be.

Mr. McGOWAN. No. I remember that when I was a boy I was working for a groceryman, and in the course of my work two or three cans of succotash fell down on top of my head. The doctor's fee was given to me—that is, the doctor himself was our family physician—but I got my pay while I was off, and I felt very happy about it. I have no bone to pick with employers or with insurance men; I do not want to pick a bone with anybody, and for that reason I suggest we do not inject into this anything that will interfere with the passage of this bill, because I feel all of these matters are mere details, and I am afraid that if we oppose this particular feature of the bill or that particular feature of the bill, the compulsory insurance feature or the bill itself, that it will be very long before it will be passed.

Mr. UNDERHILL. There is no doubt in my mind that if they insist on this proposition we will never get it through, and I am anxious to see something get through.

Mr. McGOWAN. These gentlemen are in favor of workmen's compensation.

Mr. F. R. JONES. And compulsory insurance, too.

Mr. McGOWAN. In one form or another. That being so, why fight the matter so much when it is a mere detail?

Mr. FITZGERALD. Do you not realize that if the States or the Government interpose and take away some of their business that the insurance men would hardly be in favor of it?

Mr. McGOWAN. I appreciate that, and I know their attitude perfectly. Here is the chance to write to some more insurance and they want an opportunity to write that insurance. I do not blame them for trying to get the business, but I do not want them to go so far as to jeopardize this bill. We want workman's compensation in the District. I come from Missouri, and we have not had workman's compensation out there. I am reminded that they do have it now, but that State did not have it at the time I was living there, which was about two years ago.

Mr. F. R. JONES. You had one, but they turned it down on a referendum.

Mr. McGOWAN. Yes. I have come to the District and we have not one here.

Dr. ANDREWS. That law was turned down by a referendum, but it was one that did not provide for a fund. The legislature, which met some months later, enacted a law which has the State fund feature in it.

Mr. F. R. JONES. But it is not monopolistic and does not affect the companies at all.

Mr. McGOWAN. I would like to add this: Considering all of the information I can gain and from the testimony here this morning it appears to me that the best method of administering the law is through a compulsory insurance feature. If that is the best method let us pass it; let us not fight over it; let us not try to oppose that feature unless it is for the best interests of those affected by the whole matter. But, as a matter of fact, I feel that way in regard to it; I have personally come to that conclusion, and in saying that I have come to that conclusion I want to repeat and insist that this conclusion, that I personally favor the compulsory feature of the bill, is not the conclusion of the organization which I represent—that is, the Department of Social Action of the National Catholic Welfare Council has not put itself on record as to that.

Mr. NESBIT. There is one question I would like to ask: We have to have transportation by rail, and do you think that it is a matter of detail as to whether the Government shall operate the roads or private companies?

Mr. McGOWAN. I have some Government insurance in my pocket.

Mr. NESBIT. You do not think that that is a mere matter of detail?

Mr. McGOWAN. No, sir; I would not take that up as a matter of socialism.

Mr. NESBIT. Is not this the same thing?

Mr. McGOWAN. No, sir. Here is a new type of insurance; it is a new thing entirely, and it is created by law. There is a necessity for it, but it is created by law. Insurance men would like to write it—of course they would, and to say that you would forbid a private company from writing that type of insurance as a matter of principle, I think is going very far.

Mr. NESBIT. In other words, you think that the Government should perform that function or do the insurance business, but that it should not do the railroad business?

Mr. McGOWAN. They are not parallel things.

Mr. FITZGERALD. Mr. Nesbit, I called you earlier in the hearings, but you did not reply. We intended to hear you sooner.

STATEMENT OF MR. CHARLES F. NESBIT, OF WASHINGTON, D. C.

Mr. NESBIT. Mr. Chairman, I have very little to say, and I certainly am not going to make a set speech before you, or a political speech, or anything of that kind. I have no long speech to make, but there are two features in this bill that I think the people of the District of Columbia have already expressed themselves upon, and the chief one is the monopolistic features of the bill and the fact that it would have to be administered by people in no way connected with the District government.

Mr. UNDERHILL. Do you think that would make any difference?

Mr. NESBIT. I think it is strongly a sentimental reason, but that is the question.

Mr. UNDERHILL. Is it not entirely a matter of sentiment?

Mr. NESBIT. Yes, sir; but, as Carlyle said, whether you bury your grandmother or eat her is a matter of sentiment. It is still a matter of sentiment. Now, the real issue arises on the compulsory feature of the fund. The rest of this bill, I take it, there is no real issue about, although there are involved in it a great many questions of detail—that is, whether it should cover domestic servants or not, and, of course, there is a great deal to be said about that. I think that is a question that ought to be looked into. For instance, here is a workingman and he has a wife and three or four children. She gets

burned on a gasoline stove. On the other hand, you have the case of a woman with no children to look after who burns her hand. I mention that as something to be considered, although it is a matter of detail.

Mr. UNDERHILL. What would you do in this sort of situation: Suppose there is a family of three or four children, and one of the children refuses to go to school. Suppose the child is 16 years of age, and they can not compel him to go to school or to go to work. I believe you do have a process by which you can make them work at a home, and suppose that child is injured in that home?

Mr. NESBIT. I do not know about that. I have not studied the law carefully enough to know whether such a case would be covered. but I should think not under the law as I have read it.

Mr. UNDERHILL. Suppose you were counsel for a railroad company, and you came down here to appear for the company in connection with the merger bill, and while on your way here you were hit by an automobile?

Mr. NESBIT. If the person were in the employ of the railroad company, he would be included, would he not? The question with us is as to the character of this fund. That is the big issue. Now, I do not think that I would want any more evidence than has already been produced to this committee in regard to the Ohio fund to lead me to condemn that method of handling this vast problem of workmen's compensation without competition. If there is a delay of 40 or 50 days in paying the workingman throughout a whole State, then the answer is that the legislature did not give them the money, and that they should put some men in who will give the money and change the administration. In that case you will have a great political asset. That is a primary evil coming into this kind of business. That is not a matter of detail, but it is a vital principle, and we had just as well say that we must have transportation in the hands of the Government. Transportation being one of the great necessities of the people of the United States, is it a matter of detail whether the Government performs that function or whether a private corporation shall do it? That is not a matter of detail, but it is a matter of vital principle.

Now, there is another argument put before this committee that is not fairly understood, and that is that the compensation is fixed by a commission, and that it is not left to insurance companies at all. Will not the insurance company have to pay what it is ordered to pay, after a hearing is held before this commission and after it fixes the compensation? This does not refer to the insurance company, and it does not matter what the insurance company wants to pay or does not want to pay, but it is a question of what is fixed by the Government's commission. That is all right, and there is no objection to it. That is a part of this law and it is a part of every law on the subject. The real question is whether the employer would have the right to place his risks where he desires—that is, whether the employers shall place their insurance with the State fund, with stock companies, with mutual insurance, or whether the employers who are concerned shall get together and organize mutual companies in which to carry their own risks. The premium on these risks is fixed by law. There is no essential difference between these risks and other insurance risks. All insurance is primarily for protection against an untoward event

the incidence of which no one can foretell. Whether it is for protection against fire, accident, or destruction at sea, or anything else, nobody can tell at what time or place the thing may happen; but by paying into a common fund over a period of years or months, we provide a fund, and when the blow falls on any one individual the shock is absorbed by the fund thus provided.

Now, if it is right and proper, or if it should be determined to be right and proper that the Government should cut out all private enterprise, both stock and mutual companies, from handling this business, that does not involve a mere matter of detail, but it involves a matter of principle. That is cutting at the root of the thing. Of course the Federal Government has no control of Ohio in this matter, just as it has no control over North Dakota if North Dakota wants to operate grain elevators, run banks, etc. Those are matters that the States must determine for themselves, but you are not legislating for a State. You are legislating for the District of Columbia. The Congress of the United States legislates for the District of Columbia, and if this were a new order that had dawned upon us all at once, it would be a very different matter. If there were any real need for it, or if there were a suggestion that the stock and mutual companies could not take care of this business adequately then I could see some reason for such a remarkable innovation. I can see that we should have a workman's compensation law, and I think the District of Columbia should have had one long before this, but if you are going to provide one now and connect with it all of these propositions, you will make of it a very vital question for the people of Washington, as well as for the insurance companies generally throughout the country. That is true, because you are going to find that a great many men, especially as times get hard, will look favorably upon the political jobs that will be provided, and there will be a great demand from all the 48 States of the Union for those employments. It will be necessary to employ a number of inspectors, and on the pay roll of the Federal Government and on the pay rolls of the States you will have a force that is going to work that way. The thing is going to tend that way.

Now, so far as the private companies are concerned, we are having sharp competition, and we have to get results. If the private companies do not get results, they are soon down and out. They are up against a lot of competition, and they have got to render satisfactory service. There is also competition between the stock and mutual companies, and that forces a large class of companies to render efficient service. Now, if you create this monopolistic form of doing that business, and do away with the competitive and businesslike way of conducting it, you will have interposed an entirely new element, and will have provided a system that we believe is not going to be satisfactory. I think that another point that was made the other day was very true. Washington occupies a small area of 60 square miles, with only two or three large industries in it. It is proposed here to start this fund out without an appropriation or any fund, in fact, to go upon. Then, if a catastrophe should happen in any one of those plants, and it is liable to happen at any time, they would be left without any means of providing for relief for the people, and they would have to wait for congressional action. They would have to wait for an appropriation in order to pay those claims, whereas they

should be paid immediately. You would not have that sort of a situation with the private companies, because they are prepared to pay these claims.

Mr. FITZGERALD. We have had for several years in Ohio very rigid laws in regard to the inspection of plants, and with regard to all sorts of methods of prevention of accidents. Of course, that would tend to lower the risk. Those laws are very rigidly enforced, and I think that the shops there are as free from danger as any shops in the world.

Mr. NESBIT. I think that is true. I am more familiar with fire insurance than any other branch, and I want to tell you that we are up against some great difficulties in the South. I was talking the other day to a large manufacturer from the South, who has about 20 different operations. We were talking about insurance rates, and he said that they had higher rates in the South than the same lines of business had at the North. I said to him, "You ought to have it." He said, "Why?" and I said, "Because you have more risk." He laughed and said, "I know we have." He said that one day a Negro workman walked down from the third floor of one of his buildings and very deliberately asked for the foreman. They told him that the foreman was across the street, and he deliberately walked across the street and asked again for the foreman. They told him that the foreman was busy and he waited two or three minutes, and then said to the foreman, "There is a fire up on the third floor." He said that the colored man had thrown a switch on the motor leading to an explosion when it ignited the dust, and although there were pails of water there and extinguishers, his orders were to report to the foreman on anything unusual. He said that he sustained a loss of $50,000 simply because this faithful hand did not have sufficient wit to know what to do in the emergency.

Now, there is the problem you have where you have large industries and employ different grades of labor. We face problems here that you do not have in Ohio, and, of course, all of those things enter into the cost. The cost in the South is higher, possibly, than in most other States. It is a question that will, perhaps, work itself out in time, but it would seem to me to be a most unfortunate thing to prevent competition in writing this insurance so that the business men of Washington and the employers of Washington would be compelled to insure in a particular way and would be denied the right to place their protection and buy their indemnity where they saw fit and in whatever way they pleased. They can not put it in incompetent companies that can not pay, because they are inspected and reported upon by the insurance department, and they must come up to the standard degree of solvency. Here we have no voice in the Government; we are doing business that largely serves our Government people or employees, and I think that to take away from them that right would be something that Congress would not be disposed to do, or we hope that it will not be disposed to do it. Besides that, I think it would be setting a bad example to the States on the part of Congress. It is not only unnecessary, but it is mischievous in the last degree if it should be carried out.

Mr. FITZGERALD. Mr. Duffy has pointed out some reasons why he was in favor of the monopolistic feature in this particular kind of insurance. It is different from fire insurance and life insurance. This is a form of insurance, as he stated, that has been created largely

by law. It is very largely a matter of statute, and the business is really created by law. For that reason Mr. Duffy pointed out that he believed it was the business of the Government to administer the whole thing, and not farm out the matter of compensation for injuries to workingmen, any more than the States should farm out the collection of taxes. I simply mention those points in order that we may narrow the discussion down, if we can, to a presentation along those lines.

Mr. UNDERHILL. Could it not be justly claimed that this was simply an extension of the casualty insurance business? We never heard of industries protecting themselves in that way until the casualty insurance companies took it up. It would seem to be an extension of that idea because of the nonapplicability of the common-law rule. If you reason that it became necessary for the protection of the people that the Government should make it obligatory, that being the only feature that the Government has taken up——

Mr. NESBIT (interposing). There is another reason why it should be obligatory. The common law, or the fellow-servant law, taken from the English common law, has long been utterly obsolete, because it worked a tremendous injustice to the working people of the country. I will give you an instance of that: A workman on the Baltimore & Ohio Railroad, while acting as a brakeman, broke his leg at Harpers Ferry the first day, but he could not recover under this law, because of the fellow-servant principle. Now, if you come to the question of public liability, as we call it, you will find that private companies have long insured people against public liability. For instance, you go into a hotel and stumble in the elevator which is an inch off exact level, and you sue the hotel for it. Insurance companies have taken up that form of risk. They have issued insurance contracts covering all kinds of risks, and employers' compensation is one of them, even where there is no compulsory law. We might say that in three out of four instances, the cases recover, according to the record.

Mr. FITZGERALD. It probably runs as high as 9 out of 10.

Mr. NESBIT. The cost of bringing suit, the delays in the courts, and all of those things make it impossible almost, and the workman is certainly placed at a great disadvantage. There is no question about that. Let us come down now to the issue which has been very properly stated—that is, the question of the Government compelling men to take out this protection or carry these risks in the way provided in this bill: They are allowed the very widest latitude under competitive funds, and they can carry this insurance themselves if they have the financial ability, or they can form mutual associations of their own, if they think they can do it successfully. They can go into mutual companies or stock companies, and if you want to create a State fund, they may also go into that. In other words, you should have competitive funds. In the case of Ohio, they illogically show that the State pays the overhead, but no private company gets its overhead paid by somebody else.

Mr. FITZGERALD. That brings up an interesting proposition. I understand from Mr. Duffy that about 90 per cent of the manufacturers of Ohio are in favor of the exclusive plan. Assuming that is true, and allowing for incorrect statistics, etc., it is difficult to under-

stand that there are at least 10 per cent who are not in favor of it, where the cost of it is shown to be 33 per cent less than the cost of the insurance companies when operating by themselves. Now, what I would like to get at, and I think all of the members of the committee would be interested in it, is to know why individual manufacturers or employers would prefer in any instance the competition of private companies if, in fact, it does cost a considerable amount more. It has been suggested that it is because they are interested in the insurance companies very largely and in other matters where they fear that this is a sort of an opening wedge to socialism.

Mr. NESBIT. As to the attitude of those men, I am utterly unfamiliar with it. I will ask Mr. Jones, of New York, to speak on that, because he can give you the details.

Mr. UNDERHILL. In Massachusetts we have State life insurance, and it is almost impossible to get men to insure under it. For instance, I carry over $5,000 in companies, mutual and otherwise, and only $500 in State insurance. I took that because I was a member of the legislature that passed that law, and I felt that I should support it.

Mr. NESBIT. Your State life insurance in Massachusetts is operated through the savings banks, and it is a very remarkable system. I was going to say that I thought it was doing pretty well.

Mr. UNDERHILL. They have placed it before the people through lecturers, through literature, and by making personal solicitations, but they do not seem to get the business. They do not seem to be able to get them interested in it. It matters not whether they are well paid or poorly paid, they do not buy it. It is very much cheaper than the insurance that the regular companies sell. If I make a deposit in a savings bank of a certain amount, say, of $500, the interest on that pays my premium.

Mr. NESBIT. I know there is a great deal of competition or opposition to it. There are many States that have competitive State funds that have done well. I think you will find that Pennsylvania has accumulated something like $2,500,000 in surplus from its competitive State fund, but it does not deny the employer the right to take any other compensation insurance. I think your committee would do well to hear from Mr. Donaldson, the commissioner of Pennsylvania, who has made quite a study of this question in Pennsylvania. Pennsylvania is an industrial State like Ohio. The State of Virginia has just passed a law recently, and they have the compulsory feature. They have many of the features of the Ohio law. The Ohio law has made a great impression over this country.

Mr. FITZGERALD. They have not the exclusive feature?

Mr. NESBIT. No, sir; but they did copy much of the Ohio law as to compensation.

Mr. MONTAGUE. It is more nearly based on the Indiana law.

Mr. NESBIT. The District of Columbia is so small in area and has so few industries, that it would seem to be not so necessary to create a fund here as possibly in some States like Ohio and Pennsylvania. Speaking purely personally, I can say that I see no objection to a State creating a fund, providing it is a competitive fund. If the people elect to go into it, let them go into it.

Mr. MONTAGUE. Mr. Chairman, if I can find time in the next ten days to prepare and file with your committee a memorandum or brief limited to the question of the wisdom or lack of wisdom of a State or the Federal Government going into this insurance, I shall do so.

Mr. FITZGERALD. Covering the monopolistic feature?

Mr. MONTAGUE. On that one point; yes, sir.

Mr. FITZGERALD. The committee would like to hear Mr. Kelley at some time, and if we adjourn until Thursday morning we can hear him then.

Mr. BRASHEAR. I would like to ask Mr. Nesbit one question: Do you think there is any danger through having a fund set up here in the District of Columbia, in connection with which men could be appointed to Government positions?

Mr. NESBIT. I have already raised the question with the committee that Washington is in a peculiar position. It has been a bone of contention for a long time. There are three or four hundred thousand people here who have no voice in their government. I do not know that they have any complaint to make. I have lived here thirty years——

Mr. FITZGERALD (interposing). Oh, yes; they have a complaint.

Mr. NESBIT. I would look upon it as a very great calamity if I were forced to live in any other city than Washington. I think it has the best government in the country. I think it is the best governed city I know of. I know that it is moderate in its cost to the people; it has wide streets, good schools, and every advantage that I can think of. However, they have no say about their government, or not a great deal to say.

Now, it would be a different matter, it seems to me, to impose on people in that condition a compulsory fund to which they must subscribe in this matter of insurance than it would be in the case of the people of Ohio or any other State where they have a voice in the Government. It is a very different question here. I can not answer as to any danger about the matter, and I do not know of any, but I do raise that issue, and I think that is a very fundamental question.

Mr. KELLEY. Do you think it would be more of an imposition to place that responsibility upon the taxpayer than upon the employer?

Mr. NESBIT. I am talking about the fund, and whether it should be a Government fund or whether the employers can cover it through any other kind of insurance.

Mr. FITZGERALD. Mr. Jones, would you outline in the next five minutes what you would like to say in reply to Mr. Duffy's statement about Ohio?

STATEMENT OF MR. F. ROBERTSON JONES.

Mr. JONES. Mr. Chairman, I wanted to call the committee's attention to the evidence in regard to some statements made by Mr. Duffy, and particularly with reference to the cost, but I shall not have time to go into that in five minutes.

Mr. FITZGERALD. You do not believe that those figures cover the cost?

Mr. JONES. No, sir. I am prepared to show that if I am allowed sufficient time to do it.

When we talk of this being wasted and used up, and so on, that is a very broad statement. According to figures that were gotten out

by the New York department in 1919 and quoted by Mr. Whitney in an address at Los Angeles or San Francisco, the percentages appear to be somewhat higher than those of Mr. Hooks. The total expense in connection with the stock companies is given as 38.68. I believe that, roughly, the expense is placed at about 37½. These figures, however, were not audited figures; they were based on business throughout the whole United States. Now, that figure is made up of the cost of adjusting claims, the cost of inspections, taxes, home-office expenses, and acquisition costs. Now, to just outline very briefly what I shall have to say later on with regard to those, because I shall want time to develop the point, in the first place the cost of adjusting claims is set down at 7.22. That is not wasted. It is necessary under any law and to do justice under that law—and if you do not do it as I understand it has been done in Ohio in a haphazard manner on paper, very largely on paper representations instead of personal investigations—to get at the facts through hearings and investigations in order that one employee shall not get more than he should have and that another employee should not get less than he should have. Therefore I think that within reason the money paid for the adjustment of claims and in arriving at the equities of the case is not wasted. Of course, if too much is spent in that way it would be wasted, but the question is, How much is a fair amount to spend upon a matter of that kind?

Mr. UNDERHILL. In those investigations, does it not frequently occur that something in the way of accident prevention might very well be applied at that particular point?

Mr. F. R. JONES. Yes.

Mr. UNDERHILL. Do you have a separate account for that?

Mr. F. R. JONES. That, I think, would come under other headings or ought to come under them. This is for ascertaining the real facts in the case.

Mr. FITZGERALD. You find no fault with this bill in that it does give this commission a little chance to point out and remedy dangerous conditions?

Mr. F. R. JONES. Oh, I think that is a necessary thing. If you get the facts in the case you know how that accident happened, and if you know what the facts are you have that much more information to act upon in preventing accidents in the future. With regard to inspections, which is the next item, the figure given by the New York insurance department is 2.08. No one will object to that expenditure. Now, in the case of Ohio, it used to be the fact that there were no physical inspections or little or no physical inspections of factories to make suggestions as to how they could be improved, or as to how things could be changed in order to avoid these accidents, but a system of penalties was followed. I understand that has been done away with recently, to a large extent, and that it is done by a system of demerits.

If a man has an accident, a fatal accident, a permanent total disability accident, he is penalized so much on account of that accident. It is a novel way of substituting a system of penalties for a real system of inspection of physical conditions in a factory and making suggestions with reference to how accidents can be avoided in the future. The amount of money spent by insurance

carriers, whether mutual or whether State fund or stock, on inspections is certainly not wasted. It is well spent, and I should like to see twice or thrice the amount turned in that direction. Another part of that 38.68 is the amount paid in taxes, which is set down at 3.63. Certainly the insurance companies are not to be blamed for the amount they pay in taxes, and yet that is a part of that differential of which Mr. Duffy has spoken, and to which, Mr. Chairman, you have referred several times.

Mr. FITZGERALD. That ought not to enter into it. That clause ought to be taken into consideration and eliminated.

Mr. F. R. JONES. It is our misfortune that we are taxed; let us put it that way. Now, another thing: Home offices expenses, are set down at 8.72. Waiving the question of whether or not that is too large or too small, it is my contention that it does not make any difference what you call it, but that an equivalent amount of home office work must be done. You take, for instance, the case of Ohio. They give these figures of 3 per cent or under, but no notice is taken of the fact that a great deal of work is done by collateral departments in the State of Ohio; even in the State of New York a great deal of work is done by collateral bureaus of the Department of Labor. The administration of the law, I mean, from the point of view of the clerks, the amount of supervision and the general routine of home office work, has got to be taken care of in some way by State funds; it does not make any difference what you call it; you can call it one thing or another thing, but you have got to have it. The last factor in that percentage of expense is 17.03, set down as acquisition cost. Now, gentlemen, I think that, by any process of elimination that you may take up here, you could write down in nearly every instance about this proposition that about the only way in which a stock company differs from the State funds in cost is in the cost of acquisition, as it is frequently and erroneously called.

We are willing to admit here that a certain amount of that 17.03 percentage, usually set down as acquisition cost, represents the cost of doing this business through stock insurance companies that you would not have to meet to that extent in monopolistic State insurance funds, and in some cases competitive State insurance funds. You take, for instance, the New York State fund. The New York State fund did agency work; it did agency work through other kinds of agencies. I could go into that and show you the ways by which the New York State fund solicited business throughout the State of New York, so that a certain amount of acquisition cost of that kind can be charged against the New York State fund, and I have no doubt at all that in other competitive insurance funds you will find the same thing being done, under the guise of inspections, inspectors, or through this medium or through that medium. Without getting right down to it, here is the figure, 17.03, which, we will say, represents the acquisition cost, plus other things. Now, the proportion in that 17.03 representing acquisition cost I am not prepared to say, because the other factors bound up in that percentage of 17.03 are very material. For instance, the agent, or the broker, as the case may be, gives service to the employer. You can take any great plant, for instance, where the insurance is placed through a stock insurance company, and there are many different kinds or

classes of industry in a great shop, and certainly some different kinds in smaller shops; that is, there are classifications.

It is necessary for the manufacturer or employer to get expert advice every day on some phase of his insurance risk; that is to say, to classify these things in order to get a proper premium on those various classifications. Then there is the service of assisting in reporting accidents and going through the routine required by law. There are a hundred and one ways in which the insurance broker and insurance agent is all the time contributing a service to the assured. So a certain part of that 17.03 represents service. Now, it may be that after you have taken credit for service and other activities of insurance companies and their representatives, which represent service to the assured, that there is a certain differential there that does represent the extra cost of doing this kind of insurance business as against a monopolistic State insurance fund, and if there is we are perfectly willing to recognize the fact that a competitive system or any kind of a competitive system is something that the people have got to pay for.

Mr. FITZGERALD. But you claim it is worth paying for?

Mr. F. R. JONES. It is worth paying for; that is the point I am making, that it is worth paying for. Becoming a little academic, by competition we have private activities in every direction from which we get a certain residuum that is of value to the community and to society in the long run, whereas if you tie up all industry in one great State monopoly you are in danger of dying of dry-rot; you simply crystallize things in one form, and it is impossible to have any processes of evolution take place under those conditions. Therefore, gentlemen, the competitive system is worth what is paid for it. In connection with the insurance business, as applied to workmen's compensation, we do not claim that there is not a difference that is greater than we find in monopolistic State insurance. Let me say that it would be true of every single industry in the country if—and, gentlemen, that is a very big if—if every industry were run by the Government, owned by the Government, controlled by the Government, and if every Government official and every Government employee were honest and efficient and performed his duties——

Mr. FITZGERALD (interposing). And only got about half pay?

Mr. F. R. JONES. And if he is paid the full value of his services—and he is probably now, in many instances, paid more than his full value——

Mr. FITZGERALD (interposing). Look at the Congressmen here. [Laughter.]

Mr. F. R. JONES. So, as I say, the competitive system is worth what it costs, and we would be in an awful slump and in an awful dump if we did not have the competitive system.

Mr. FITZGERALD. I think we can all agree with you on these things, but what we are trying to get at is how big the differential is and whether it is worth it.

Mr. F. R. JONES. The best proof of the pudding is the eating of it.

Mr. FITZGERALD. And we would like to have the result of your analysis of that as closely as you can approximate it—your idea of what the differential probably is, taking all the factors into consideration.

Mr. F. R. JONES. As a rough guess—I have not gone into this——

Mr. FITZGERALD. I do not mean offhand, but prepare something for the committee.

Mr. F. R. JONES. But I am willing to admit that as much as probably 7 per cent represents the value of competition, that it might be that much, but you can readily see that it is a matter incapable of demonstration, because you can not demonstrate the value of these services of the agent and of the broker to the assured. Now, as I said, probably the best proof of the pudding is the eating of it. You take State insurance. Mr. Duffy has appeared, and Mr. Duffy makes a very forceful speech and a very persuasive speech. I have heard Mr. Duffy make quite a number of speeches. Mr. Duffy has presented this side of the case as ably as he did to-day to the Minnesota legislative commission, and he presented it also to the New York judiciary committee three or four years ago. He has presented these same arguments to, I will say, 8 or 10 or 12 or a score of States, commissions, and so on, throughout this country, but not a single one of them has adopted Mr. Duffy's Ohio system with the exception of the Nonpartisan League State of North Dakota; not one of them. They have every one of them turned down this proposition that Mr. Mr. Duffy says is the best thing in the country.

Mr. FITZGERALD. I am afraid we will have to adjourn, as much as we would like to go on; we have run considerably over time, and on Thursday we will be very glad to hear you further. Any memorandum you may care to prepare will be given very careful consideration, and Mr. Kelly will be here on Thursday. Mr. Duffy, on behalf of the committee, I want to thank you very much for your attendance and the very best exposition we have heard. If there is anything further that you care to offer in favor of the exclusive plan in Ohio in addition to what you have said, I would be very glad to get it in printed pamphlet form or in any other form.

Mr. DUFFY. May I make this one statement, that the arguments which have just been made I have heard before, too. [Laughter.]

Mr. FITZGERALD. We do not understand that Mr. Jones has always kept silent.

Mr. DUFFY. The point I want to make is this, that the reason other States have not adopted it is this, there is too much money against it.

Mr. F. R. JONES. That is hitting below the belt, Mr. Chairman.

Mr. DUFFY. I am not hitting below the belt. In Minnesota it passed the house, did it not?

Mr. F. R. JONES. No.

Mr. DUFFY. Two years ago?

Mr. F. R. JONES. Yes.

Mr. DUFFY. But was lost by one vote in the senate.

Mr. F. R. JONES. It was overwhelmingly turned down.

Mr. DUFFY. You do not mean two years ago?

Mr. F. R. JONES. No; when it was a Nonpartisan League State, like North Dakota, Mr. Duffy.

Mr. DUFFY. What I want to show is that an investigation was made of the law by a so-called State board of commerce.

Mr. FITZGERALD. Do you mean in Minnesota?

Mr. DUFFY. No; in Ohio. It was in charge of a man by the name of Schimansky. A report was made and a copy of it was put upon

the desks of the house and senate in Minnesota for the purpose of defeating the proposition in Minnesota, through the prejudice it created, and being called a socialistic theory, and such as that. I only cite that to show you the methods used, and I say that if it were not for such methods they could not stop the State insurance fund from being adopted in Minnesota and all the other States.

Dr. ANDREWS. And it will be.

Mr. DUFFY. I wanted to say that, because I can not be here to answer Mr. Jones. I also want to say this, that when the board of commerce in Ohio made a further attempt to change the Ohio law this last time they sent out circulars broadcast, claiming that they had 3,000 signatures, and later they claimed that they had the signatures of 5,000 Ohio employers.

Mr. F. R. JONES. Are not those signatures on file? They are on file, as I understand it.

Mr. DUFFY. No; they are not filed; they stated that they were the duplicates, and that if they wanted to see the originals they could go to Mr. Schimansky's office, where the originals were on file. The point I wanted to make is that the insurance men financed that movement.

Mr. F. R. JONES. Mr. Chairman, I would like to have Mr. Duffy offer any evidence he may have of that fact. I know it is not so.

Mr. FITZGERALD. If the insurance men did not interest themselves in it, they would not be looking after themselves.

Mr. F. R. JONES. We would like to see that done, because Mr. Duffy makes a definite charge there.

Mr. DUFFY. I make the charge and stand by it, that it is financed by insurance men.

Mr. F. R. JONES. And I will make the charge that Mr. Duffy can not prove it, that he can not give the slightest evidence of that, and I can give him evidence that that is not true.

Mr. FITZGERALD. We will receive memorandums from either side.

Mr. F. R. JONES. Can you give the evidence?

Mr. DUFFY. Yes; I can give the evidence.

Mr. F. R. JONES. Will you file it with the committee?

Mr. DUFFY. No.

Mr. F. R. JONES. I will file my evidence with the chairman that that is not true.

Mr. FOCHT. As has been said, Pennsylvania has had written on the statute books a law that works, and as there will be 36 members from Pennsylvania ultimately called upon to vote on this question, may I not, as an ex-officio member of this subcommittee, have Mr. Donaldson come here on Thursday, if I can get him? We have no means of defraying his expenses, but possibly the State of Pennsylvania will see that he comes, and while we are on the subject we will hear from one who knows, or ought to know, all about this in a great industrial State like Pennsylvania.

Mr. FITZGERALD. Following your suggestion, we will hope to hear Mr. Donaldson on Thursday.

Mr. FOCHT. I have no idea as to what his views are at all, but I know we have in successful operation there a workman's compensation law, and I would like to have his testimony, and I think he can throw as much light on these matters as any of the experts who may

be called. Therefore, I will wire him and ask him to come. I will use every effort to have him here.

Mr. FITZGERALD. Mr. Duffy, do you care to continue?

Mr. DUFFY. I do not want to take up your time, because we are getting away from the question entirely. However, the reason I say I will not furnish the evidence is because I get it from an insurance man himself, and I expect more information.

Mr. F. R. JONES. We will release the insurance men, Mr. Chairman; we will release that evidence. I will guarantee to get the consent of the president of the company of which that insurance man is an agent to give any evidence he has.

Mr. DUFFY. I do not play that kind of a game.

Mr. FITZGERALD. You can well understand, Mr. Jones, that that man's future in the insurance business would not be very prosperous if he did that. The committee will stand adjourned until 10 o'clock, Thursday morning, May 19, 1921.

SUBCOMMITTEE OF THE COMMITTEE
ON THE DISTRICT OF COLUMBIA,
HOUSE OF REPRESENTATIVES,
Thursday, May 19, 1921.

The subcommittee met at 10 o'clock a. m., Hon. Roy G. Fitzgerald (chairman) presiding.

Mr. FITZGERALD. The committee will be in order and it will be glad to hear from Mr. Kelly.

STATEMENT OF MR. JOHN T. KELLY, LOCAL LEGISLATIVE REPRESENTATIVE BROTHERHOOD OF RAILWAY TRAINMEN, WASHINGTON.

Mr. KELLY. Mr. Chairman and gentlemen: I believe I represent a body of men that follow the most hazardous class of industry a man can be engaged in; that is, the railroad workers, the brakemen and the trainmen and conductors. The need of this bill, gentlemen, to the worker, I think, is one of the most essential things that has ever been introduced in the House or will be introduced in the House.

I will cite you an instance that came to my attention not later than yesterday. A man by the name of John Stafford Taylor, an employee of the Pennsylvania Railroad for 49 years, is right now in the Casualty Hospital, operated on Monday for a hernia that was incurred in line of duty. That man has not absolutely a nickel, if I must use the expression, to defray his hospital expenses. He sent for me to see if I could possibly raise some money among my coworkers. He is a man that always was opposed to giving his bit, but I could not say that I was opposed to assisting him. I told him, "Mr. Taylor, just at present, the men employed on the terminal property are not large enough to make a donation that would be large enough to assist you in any manner at all"; but I did go to the company and I stated my case to the trainmaster. He said, "We can not do a thing for you." I said, "Mr. Heeley, let me bring this to your attention. Mr. Taylor has given faithful service to the Pennsylvania Railroad for 49 years. He has been a member of

the Pennsylvania Relief for 39 years. He has paid $2.25 a month into that relief"—which amounts, gentlemen, to close to $1,100. I said, "Can you overlook the fact of this man paying the sum of $2.25 for 39 years and you can not advance him the small sum of $150?" He said to me, "Kelly, due to that fact I believe I will take this up with the superintendent." He is going to take it up with the superintendent, but, of course, there is no assurance of getting the $150. The only place left open to that man is the poorhouse. I told Mr. Heeley, "He wants to borrow this money; he does not want you to give it to him. He wants to borrow it against his claim." The man is close on to 70 years of age.

Mr. UNDERHILL. Does he belong to the union?

Mr. KELLY. No, sir; he has absolutely refused to go into the Brotherhood of Railroad Trainmen. If he was a trainman, gentlemen he would be taken care of.

Mr. UNDERHILL. That is, if he was a member of the union.

Mr. KELLY. If he was a member of the Brotherhood of Railroad Trainmen; yes, sir, he would be taken care of. Now, that is one case.

I will cite you another case of a young man by the name of Brown, an overseas veteran in the prime of life. I do not guess Brown is over 24 years of age. Right back of this building here in the freight yards of the Pennsylvania Railroad he was caught in between two cars on a curve track and his pelvis bone was shattered. Brown to-day can not perform any manual labor. The Pennsylvania Railroad gave him a position as a call boy. He is a man with a family. He could not ride a bicycle due to the trouble with the pelvis bone, and they have let him out. Now, he belonged to that relief, and due to the fact that he entered suit through one of these ambulance lawyers—to show you how bright he was, he entered suit against the Pennsylvania Railroad and when he compromised, gentlemen, he got $250; not enough to pay for his hospital bill or not enough to pay for his grocery bill while he was in the hospital. It was a case of "compromise or we will starve you."

To show you how the law does not protect the worker, when that man entered into a contract with the Pennsylvania Railroad, that was entirely separate from his wage. I say the Pennsylvania Railroad could take his wages away when he was not working, but, gentlemen, he paid that insurance to get that $2.50 or $2 a day while he was ill and they took that away from him and cut him off. That is another case, and I will cite you another one.

Mr. UNDERHILL. Does the Pennsylvania Railroad pension their employees?

Mr. KELLY. The Pennsylvania Railroad pension their employees at the age of 70.

Mr. UNDERHILL. And if they are injured previous to that time do they get any retirement?

Mr. KELLY. If they are injured previous to that time and apply to the relief, they get that $2 or $2.50 a day. They must be sick 7 days before they receive that benefit.

There is another case I will bring to your attention. This was compromised out of court. A man by the name of Davis, absolutely contrary to the Interstate Commerce laws, was caught between a 75 or 80 foot coach in between a platform and rolled. Luckily, the fellow was slim, because had he been a heavy-set fellow his widow would have been a lucky woman, as we call it, because she would have gotten a lot of money quick; that is, would have gotten money from the trainmen. He compromised and was lucky. I think by the time Davis got through he got about $600, but that would not have been anywhere near his wages had he worked. Davis to-day is a man, as long as he lives, with both collar bones broken, and internally injured. Davis can not go out to-day and do a day's braking. He might work around this local terminal but put him on one of the main lines where he has got to go down and get it, as we call it, and he could not stand it.

Mr. UNDERHILL. Mr. Kelly, if a man is injured on the Pennsylvania Railroad in Pennsylvania, then he gets workmen's compensation?

Mr. KELLY. Yes, sir.

Mr. UNDERHILL. But if he lives in Pennsylvania and happens to be injured here in the District, he does not?

Mr. KELLY. Not a nickel, sir. I will bring that up, Mr. Underhill, in a very few seconds. To show you what they can do now when you apply to this relief, I joined that relief because I had to. Every man working on the railroad in and about the city of Washington belongs to that relief. He had to join it or he could not get a position. Of course, after you are in there, on account of the nature of the work and to protect your family and protect yourself, you are going to continue it on. The insurance companies will not offer us a good feature. If any representative of an insurance company to-day on the floor of this room will offer me a good feature, I will guarantee to turn over 450 applications before this day one month, but you do not want it; it is too much of a risk. The premium you will exact is too big for a man to pay; but, gentlemen, you will come here and oppose this bill, and why? I think it is very un-American. Mr. Montague, the other day, represented everything from the frozen sea gulls of Cuba to the overheated Eskimos of Greenland. What brought him here? He did not come here in the interest of the worker, and, gentlemen, I want to say right here that 95 per cent of the men working on the railroads in the United States are American citizens, and 75 per cent of them are ex-service men. What are you going to do with those men after they are injured—turn them out; make them an object of charity? Are you going to make the local community pay for that? We have got a poorhouse, it is true, but you do not want to send them there.

Mr. UNDERHILL. What you want, Mr. Kelly, is a workmen's compensation law?

Mr. KELLY. Mr. Underhill, I will tell you that a workmen's compensation law expresses the sentiment of my coworkers. We will pay for it. We do not want this United States Government to take us along like a baby in a carriage. We are men, and we are willing to pay our pro rata share; but we do want the protection of the United States Government, because I will tell you that we have been flimflammed so much that when you say lawyer to a railroad worker he says, "My God." I am not saying that about all lawyers. I would not dare say that, but there are so few in the city of Washington that you can trust, that will not sell you out, that will not put you

on the block, the same as they did the darkies before 1861; if they can get any kind of compromise at all they will take it. If it goes in court, how long does it ride? The worker is not in a position to fight them. Mr. Underhill, I will tell you this is the only bill that has ever been introduced in the city of Washington to protect the worker, right here under the dome of the Capital. Of course, gentlemen, I am a "foreigner." I happen to that misfortune by being born and raised in the city of Washington 42 years ago, disfranchised, with no vote and no voice; and here is the only time that such a bill has been introduced here. To some of you it might seem amusing, but if you will go with me through the railroad yards in the nighttime and see men toiling for their bread in those yards, and go along with me to the homes and see the widows and orphans of men mangled; if you would go along with me some time when I am passing a list around for my coworkers to keep the wolf from the door, gentlemen, you would not oppose this bill, not for one minute.

Of course, the widows and orphans you do not see. Possibly, you are not engaged in the railroad industry where it would appeal to you. I know there is not a man here who has not the same respect for the orphans that I have; I know there is not a man here who has not the same amount of charity I have; but, gentlemen, if you want to see the millstones grind go where the grist goes through; go with me to any yard here. The city of Washington is the railroad center we are speaking of, and if you will go with me in the nighttime and see those boys and see how they have to go get it, as they call it, you will see that there is not enough protection here for the railroad men to protect them in this hazardous work. The yardmaster will tell the trainmaster, "You have got to ride those cars," and I have seen some pretty bad sights which have made me have a lot of respect for this bill. I have seen how the widow has been duped and I have seen how the worker himself has been duped. I want to call your attention to one fact, gentlemen, and I think it is worthy of a lot of consideration. We will take the railroad worker as a whole, and when Uncle Sam went to war, I think the Brotherhood of Railroad Trainmen stood an expense of one and a half million dollars to keep their men in the field over in France.

I forget now just how many thousand dollars we paid to keep their expenses up. We have got them out in a home in Highland Park, Ill. We have a home there right on Lake Michigan and we are taking care of our men. We bought the Liberty bonds the United States Government offered, and we did work at a slavish wage. It is true that the papers come out to-day and speak of the outlandish wages the railroad worker is getting, but last year I lost one day and three hours in 365 days in the year; only one day and three hours. It was not because I was greedy; it was not because I wanted to grab the dollar, gentlemen, but it was a case of absolute necessity. If I did not work I did not eat, and it is unlawful to steal. I am trying to carry all the insurance I can. I am carrying insurance in the Prudential and I belong to the Brotherhood of Railroad Trainmen, and I also belong to this relief over here. I am loaded with as much as I can carry, but I have no guaranty, only the Brotherhood of Railroad Trainmen and the Prudential.

With this company right over here of recent date there was a man by the name of Erickson, a good, faithful worker, and a good employee, right under the care of a physician. Dr. Dryer called him back and gave him a visual examination and he said, "Come back to me in a day or two and I think you will be all right." He said, "All right, Doctor." In a few days he came back and he gave him the same visual examination again, restored him to duty and cut him off of that relief. You can pay in that so-called relief 2 years and 11 months and you can be half an hour lacking of the three years and they can cut you off. It is estimated there are 30,000, but it is closer to 100,000, railroad employees being laid off in this country.

Mr. UNDERHILL. Mr. Kelly, you say you carry a policy in the Prudential?

Mr. KELLY. Yes, sir.

Mr. UNDERHILL. You would not object to the Prudential carrying a casualty policy for you?

Mr. KELLY. Absolutely not; if they can give me any kind of favorable policy; but the only protection, as I said a moment ago, I have really got, is the Brotherhood of Railroad Trainmen. They can take and cut you off. This does not apply to all the railroads, because there are some railroads in the West that do not exact of you to join their relief, but you can not get a position on the Pennsylvania, the Baltimore & Ohio, or any of the terminals in and about Washington, and I do not think, of all the systems in the United States, there are over five that you can go to work on, and I want to tell you, gentlemen, that before you can go to work for any railroad in the United States your eyes have got to be all right and you have got to be physically perfect. You have got to be a perfect specimen of manhood, heart action, lungs, and everything all right. They will not take you if you have any defect at all, and still, with all that good risk, they get for the least infraction of any of the rules you are dismissed, and you can not get a nickel of that money back. I contend in this Erickson case where this man was let out and another man was permitted to pay insurance, if I believe the law as I have heard it, it is a case of conspiracy, is it not—when you deprive a man of one right that you allow another man to have? Of course, if you are a labor leader they call it conspiracy, but it is pretty hard to touch these high officials.

Now, what are we going to do with this fellow, Brown? He has a wife and four children. His earnings capacity has been taken away from him. He has been let out, as the boys call it. He is too young to go to the Home for the Aged. If he goes to the poorhouse they will put him in jail for nonsupport. They have taken his earning capacity away from him. What are you going to do with him? What are you going to do with his children? You say that the children are entitled to an education but you have taken the breadwinner's earning capacity away from him. Now, gentlemen, in fairness, what would you say to do with that man, wife, and child? I think, in a humane way, you ought to shoot the whole business, because I would prefer at any time to face a .45 than starvation. It might seem amusing, but it does not strike me that way.

A few days ago a gentleman appeared here by the name of Mr. Nesbit. I am sorry he is not here now because I do not like to talk behind a man's back. Now, mind you, Mr. Nesbit was former

commissioner of insurance in the District of Columbia, and in a position to protect these workers whose money was being taken away from them. Did he do it? He did not, and if he did not do it—well, I would not say it is lack of brains because he had enough intelligence to stand on this floor and address this body. Was he scared of his job?

Those things can run through your head and I will not cite them, but he told an old insurance yarn about a darky and the carelessness of an employee. He told a yarn, gentlemen, I heard 20 years ago, only told a little differently. Now, picture a man if you can, I do not care how dumb a Negro is, walking from the fourth floor leisurely down a flight of steps and asking where is the phone, and picture that man, finally, going across the street to a tobacco shop, and then he says, "Boss, the fourth floor is on fire." If Ananias was in the room, I think he would have given a medal out. Picture that. I heard that yarn told years ago about the coachman going away with the boss's wife—I guess you heard that, didn't you, about the horse being burnt up in the stable and the stable burning down from a spark in the house, and so on. It is a good story to sell insurance, but to think that a man would come before an intelligent body like this and tell a yarn of that description.

Now, Mr. Insurance Man, and each and every one of you here assembled, and our so-called chamber of commerce—I think the Chamber of Commerce of the city of Washington ought to be a little interested in the man who is the breadwinner—I will go on record here, and I can pretty near produce the goods on what I am going to tell you—I am going to go after this Washington Terminal Relief. They might get me, but I am a poverty-stricken fighter, but I am just as good a fighter as they are—I will give you insurance men here my word as a man, and I can come pretty near pulling anything I want in that lodge, because, if I must say it myself, I am on the square with the boys; if you men will give me any kind of an insurance policy, I will guarantee to deliver to you 450 able-bodied, good, breadwinning American citizens, and if you can give me anything at all near like Mr. Fitzgerald's bill I will go on record right now as opposing it; but you can not. You are actuated by greed. It is not a question of your fellow man. Is there not enough money in this broad American land without dropping down in a little poverty-stricken hole 10 miles square to deprive a worker of a protection which he should have?

Mr. UNDERHILL. Mr. Kelly, I do not want to argue the question with you.

Mr. KELLY. No, sir.

Mr. UNDERHILL. But I do want to explain the matter, if I may, perhaps. You seem to have a rather vague idea of what the controversy is here. You say you are satisfied with the situation as it exists in Pennsylvania. If you are familiar with that law——

Mr. KELLY. I am a little bit familiar with the Pennsylvania law, but I prefer the Ohio State law.

Mr. UNDERHILL. And the Massachusetts law, you will know that the men are protected. There is no question before this committee, as I understand it, regarding the advisability or the necessity of a workmen's compensation law. It is an absolute necessity, and it ought to go through. The question is whether we are going to establish, to a certain extent, a new method of administering this protection or whether we are going to maintain the laws which exist in practically a majority of the States in the Union; that is, whether we are going to have a workmen's compensation law here in the District of Columbia, or whether you are going to insist on the governmental monopoly feature of it, and thereby jeopardize the passage of the bill. That is the question, and I think if that question could be settled we could report a bill to-morrow; and although I do not like to prophesy, I would say for myself I would give every ounce of energy and effort there is in my body to get that through. Now, that is the only question.

Mr. KELLY. Mr. Underhill, according to the statement you have just made, I am in thorough accord with anything at all you suggest or any bill at all you propose, but I have read this other bill and I know what it is.

Mr. UNDERHILL. I will go just as far as anybody will, whether they are trainmen, or masons, or bricklayers, or anything else, but I do stop at that one feature of the bill, and that is the only thing.

Mr. KELLY. What is that, Mr. Underhill?

Mr. UNDERHILL. The monopolistic governmental operation.

Mr. KELLY. Mr. Underhill, who do you think would honestly give the workingman the square deal that the Government would give him?

Mr. UNDERHILL. Understand that under this bill and under my bill the Government would give it; the Government would give a square deal to the man, the only thing is that this bill eliminates all the insurance companies from writing insurance. The casualty company with which you are insured now, and in which you have confidence enough to carry a policy, is eliminated.

Mr. KELLY. I do not oppose any of the insurance companies in the city of Washington writing insurance. I am not that un-American.

Mr. UNDERHILL. That is all there is to it.

Mr. KELLY. I say absolutely, yes, write insurance and write as much as you please, but I do go on record, gentlemen, as saying that I sure do love Uncle Sam, and I am going to tell you again that I do not want him to give me anything. All I want him to do is to keep me in good shape so that I can go out and get it. I do want Uncle Sam to do this: This man Taylor that I was telling you about a few moments ago paid into the Pennsylvania Relief for 39 years $2.25 a month, which, not counting the interest, amounts close to $1,100, and I also say that if Mr. Taylor to-morrow morning would show any discourtesy in any way at all to any of the officials, they would cut him off. Now, what could he get? If he dies his widow is paid very near $1,100; his family would get $750. If he is killed in action, they would receive $1,500, but believe me, they are from Missouri and you have got to show them that the chap was killed in action. There was a man killed over here by the name of Moffett in what I contend was line of duty. This man Moffett was a yard brakeman. It was pay day morning and right snowy. We had to go up to the pay car to get our money. Moffett went like to rest of the men to get his money and after getting his money I believe he delayed some little time. Possibly he owed some of the boys on the property a few dollars, but what the delay was, I do not know, and I am not going to question that, but I do know this much, that Moffett would not commit suicide.

Two of the Pennsylvania engines were backing out over the plant and hit this man and crushed the life out of him. Now, according to that so-called policy that he had, entered into in good faith with the Washington Terminal, his widow should have gotten $2,500, and what did she get? She got $1,200. They claim this man Moffett was off duty, but I say he was not off duty. He was there in line of duty and in line of business. He stayed there to get his pay check. They will tell you, on the other hand, that as long as you are on the property you are held accountable for your actions, and if you are accountable for your actions on the property, you must be in line of duty as long as you are on the property.

Gentlemen, I do not want to take up too much time because I know there are other men here to talk, but I would like very much to see this bill go through for the protection of the worker, and I want to tell you gentlemen that we do not want Uncle San to give us this money; we are willing to pay a liberal premium to support it. You do not need to start the workers with a nickel. I had some data to bring along to show you the surplus among 1,200 or 1,400 men, a good big sum.

Mr. UNDERHILL. You do not want any bill that will involve the worker in part payment, as I understand?

Mr. KELLY. Excuse me, Mr. Underhill. Here is the idea of the workman, give him something, but make him work for it.

Mr. FITZGERALD. That is not the purpose of the workmen's compensation act. It is not only for the protection of the workers, but the industry which takes care of it.

Mr. KELLY. I heard an argument a few days ago with reference to the monopolistic idea.

Mr. FITZGERALD. That is another thing.

Mr. KELLY. We want it to be more liberal, but I say let us make the worker pay for his pro rata share.

Mr. FITZGERALD. I do not know but what your idea is a very fine one for the worker himself, but unfortunately it would enable the employer to hold a club over his head. It would be somewhat like the damnable relief association of the terminal railroads where they exact money from the men and fire them after they pay.

Mr. KELLY. I guess that is about all I have to say. If you have any questions, I shall be glad to answer them.

Mr. FITZGERALD. You are going to furnish the committee with the data?

Mr. KELLY. Yes, sir; I will get you some data.

Mr. ANDREWS. I understand Mr. Kelly to say definitely that he is favorable to the Ohio plan?

Mr. KELLY. Absolutely.

Mr. FITZGERALD. We will now have the pleasure of listening to Ex-Governor Hart, of Washington, where a bill similar to this in some respects is in operation. Gov. Hart is a reformed lawyer.

Mr. HART. You got me wrong, Mr. Chairman.

STATEMENT OF HON. L. F. HART.

Mr. HART. The chairman has just said that I had reformed. I never was very much of a lawyer, although I practiced for a number of years.

I hardly know, gentlemen, what to say to you about this matter. I have not been consulted. Mr. Fitzgerald, for some reason, imagining that I knew something about these matters, called me up over the telephone and asked me to appear before the committee this morning.

I want to say, judging from the remarks of the gentleman who has just spoken and the matters under discussion here, I know nothing about them. We have no interstate railroads of any consequence and consequently our compensation act does not apply, in general terms, to the railroads. We have no transportation over interstate railroads, and they do not contribute to our compensation fund, nor are their employees included. We have a great deal of hazardous and extra hazardous employment in the State of Washington in our logging camps, in our sawmills, in our powder mills, and in our general manufacturing plants. We have a large percentage of our people engaged in hazardous occupations. The various plants or industries are classified, and each class pays, according to the hazard, as shown by the history of the plant. The matter of compensation is adjusted by our commission, assisted by the medical man, and is paid under the rating as fixed by statute. The entire expense of administration is paid from the general fund or the general revenues of the State. The contributions by the employers or the plants or industries are used wholly in paying claims for injury.

I think, Mr. Chairman, if I understand you aright, you are mistaken in the point concerning our own law, that it is monopolistic.

Mr. FITZGERALD. No; I understand it is not monopolistic.

Mr. HART. I do not know what you mean by that term.

Mr. FITZGERALD. That is the term which insurance people use to denounce what the others call the exclusive feature. That is, in Ohio, for instance, no insurance company is allowed to write any of the working compensation insurance; it is carried entirely by the State funds.

Mr. HART. Under that statement, perhaps, ours is not monolistic or exclusive, but every employer and every industry employing men in hazardous occupations must contribute to the fund, the employees coming under it. If a man wants to carry death and casualty insurance that is his privilege, but he must pay the rate to the State. He can not do business in our State without it. The Commissioner of Pensions was very anxious to change that last winter, but found it was not possible to get such an amendment through and abandoned the project. We have very little casualty insurance in our State compared with others, for the reason that it is not obligatory; it is not compulsory.

I might say that in my opinion the greatest benefit to our people—I mean the people engaged in hazardous occupations—the greatest benefit to those people is in the lessening of the hazards in our various industries. It is the safety appliance and the intelligent educational work for safety first that has proven of great benefit not only to the employer, but to the employee.

I was incidentally discussing this matter in my office about a month ago with some loggers. We were discussing the reclassification of

some of our industries, and one gentleman said, "Why should I pay the same rate as my friend, Ed English? I think Ed is still dragging the logs over the skid roads with mules or horses. I haul all the logs out with a donkey engine to the loading station or central place, and they are put on the cars and carried away. Why should I pay the same rate as the man who has this old equipment which has been in use for probably 35 or 40 years? I said, "Jack, you ought to pay it. We have provided for that a reward, safety appliances for the avoidance of accidents." They are all equally anxious to do it. In my opinion the greatest benefit to the State and everybody engaged either as an employee or employer in hazardous occupation is by reason of the increased safety.

Mr. FITZGERALD. Please tell us what opposition there has been from insurance or casualty companies against the plan in Washington?

Mr. HART. It has come mostly, Mr. Chairman, as rumors. I have heard that they would like to make it optional with the employer to take casualty insurance from the companies or from the State.

Mr. FITZGERALD. Do you think there is sentiment among any of the people, who have watched the Washington act in force and know how it has been operated, in favor of opening up, allowing competition?

Mr. HART. Practically none, sir.

Mr. F. R. JONES. I should like to have the privilege of asking Gov. Hart a question, if he will permit me. I had the pleasure of meeting Gov. Hart at Tacoma last January, but probably he has forgotten me.

Is it not a fact, Governor, that last January the Industrial Council of the State of Washington, representing approximately 4,500 employers of labor in the State, voted to support a proposition to permit the stock companies, the private companies, including the mutuals, to enter the State and do this compensation insurance business?

Mr. HART. I have no knowledge of anything of that sort, but if you say it is so——

Mr. F. R. JONES (interposing). They did go on record. Just one other thing, with regard to expenses. Did not the Legislature of the State of Washington just recently fail to appropriate money for the expenses of the commission?

Mr. HART. No, sir. We can not spend any money in our State without an approprtiaion. I will explain that if you will permit me.

Mr. F. R. JONES. May I interrupt you?

Mr. HART. I am perfectly willing to be interrupted, and I want to give you all the information I can, but I do not want to give you anything but information.

When our industrial insurance was created it was claimed by those who favored the measure that the industries could afford and would take care of all the expenses. There was an appropriation, I think, at the first session, if my memory serves aright, of $250,000. It was termed, by a number of members of the legislature, as organization expenses, in other words, to complete the machinery and start the matter to work, but at the next session of the legislature, without any particular controversy over it, an appropriation was made to take care of the administrative expenses.

In 1917, while presiding over the State senate, I went before the appropriations committee and insisted that the industrial insurance ought to pay its own way. They did not agree with me, and neither did the legislature, and the appropriation as usual was made.

In 1919, through the efforts of some of the legislature's representatives—I do not mean the members, but those who operate before the legislature and work the legislature on the outside—both employers and employees got through a bill creating a medical board and several State safety boards and they provided—it is not necessary to go into the details—they organized them and they were made a part of the State machinery. I never found anything in our constitution giving those people any governmental functions, but the legislature passed the bills and made a very considerable appropriation, and they spent it—that is all they did, just spent it. So, when they came back to the legislature that year I insisted on the adoption of a legislative proposition that would take care of the industrial insurance, the medical aid, the safety boards, the labor commissioner, our safety commissioners, the public mine inspectors, the steamboat inspectors, and the hotel inspectors, all of those things pertaining to industries in labor in one department.

The medical aid, if I recall aright—if I am not mistaken—was given a fund for carrying on the expenses of the medical aid department as created in 1919 and was paid exclusively by the employers and employees; anyway, it did not come from the State. I was very insistent when I came in as governor of the State that these different governmental agencies should pay their own way; these things which had been placed on the Government as governmental functions during the last 25 to 30 years. That is, I insisted that these things should pay their own way. The floor leader in the house happened to be one of the largest employers of labor, Mr. Reed, and he agreed with me that it was fair and that he would support the measure, but several members of the appropriations committee objected very strenuously, and we compromised the matter. A part of the administrative expense, about the same as was paid into the medical aid fund, is paid by the industries. There is that division of the expense of maintenance.

Mr. F. R. JONES. If you will permit me, I understood that you had supported the measure for having the expenses of the industrial insurance act placed on the employers; that you had advocated the employers standing the expense?

Mr. HART. The farmers are not interested in the matter one way or the other. Whether it was all paid by the employers or all paid by the public does not make much difference, because a man is not going to work unless he gets a satisfactory revenue.

Mr. UNDERHILL. Does your law exclude the farmers?

Mr. HART. I think probably we have never determined that general farm work was a hazardous occupation, although I will say that one of my neighbors a few years ago was blowing stumps, clearing land, and we sent some fellow up there and he said that came under the classification; but, generally speaking, farming is not considered a hazardous occupation.

Mr. ANDREWS. I have a statement here made by an official of the insurance commission of Washington, in regard to the attitude of the employees and employers of the State. He was asked the question

whether the employees and employers in Washington State were opposed to the exclusive State fund plan that you had in operation there, and in reply to that question the chairman of the commission said, "We think it is safe to say that there is none among the employers or workmen of the State of Washington who would listen for a moment to the suggestion of the abolition of the State fund."

The second question asked by the commissioner was this: "Please answer any criticisms which the enemies of your State fund are making against it," and the reply of Washington was:

> The criticism of the act in this State comes entirely from the liability companies who have been put out of business in the State by the State fund.

That is under the compensation act. Not put out of business, of course, but merely for compensation purposes.

> They are now criticizing the law at long range. They no longer attempt to criticize it here in the State of Washington, because they can not get anywhere among the people who are familiar with our State fund plan. They attempted to assail it in 1913 and went to considerable expense in publishing an elaborate pamphlet. These pamphlets were freely distributed among the members of the legislature and their claims were so ridiculous that they were laughed out of court. Not since that time have they undertaken to discourage the law here in the State of Washington. They, of course, are misrepresenting the law in other States, with a view to keeping those States from enacting a law providing State insurance. This is to be expected.

This report was a little earlier than the time mentioned.

Mr. HART. Is that Mr. House's report?

Mr. F. R. JONES. Yes, sir.

Mr. HART. I thought it sounded like him.

Mr. F. R. JONES. Yes, sir.

Mr. HART. It is a little overdrawn.

If I get exactly the question you are asking, our industrial insurance act does not approach anywhere near the Utopian; it is not perfect. The men who direct this work and who are doing this work are humans, men engaged for a long time in that class of work, and the commissioners, the claims agents, and the council are influenced by their experience. Some of them have become strongly prejudiced and others are strongly carried away with their sympathies. It so happened last year that there was some increase in the expenses of the cost of the industrial insurance in our State by reason of the granting of claims or the adjusting of claims at higher levels. At the same time that we thought he was in our employ we have reason to think he was in somebody else's employ, a very bright, active gentleman, who felt it was more his duty to discourage the industrial insurance by employers than the thing we thought we hired him for. He sent out a number of so-called secret reports, copies of which were returned to me. That created a considerable feeling for a while. However, he is no longer in the employ of the State. Whether he is in the employ of the other gentlemen or not, I do not know, but it did create quite a little feeling. You must remember that these acts have to be administered by men. You can not expect everything about this to be perfect or to be entirely free from expense. I have no doubt that our commission examines carefully the injured workmen. Possibly sometimes they reject a claim that ought to be paid and possibly sometimes they overpay. Sometimes they pay one when there is no reason why some of our employers might not have felt willing to divide up the burden.

During the first few years of our work in taking care of pensions we set aside the money, and if the woman died or married we placed that fund into the accident fund without regard to the liability expense, and there was a very considerable deficiency that somebody has to make up.

Mr. UNDERHILL. In other words, it provided that if a woman got married it was an accident?

Mr. HART. It might have been a misfortune. Sometimes they got two years' pension in advance. There was not any accident about that. Is there anything further?

Mr. FITZGERALD. We thank you very much.

Mr. HART. Have I told you less or more than you want to know?

Mr. FITZGERALD. I think your statement has been very helpful. We are much obliged to you.

STATEMENT OF MR. W. C. FISHER, ACTUARY PENNSYLVANIA WORKMEN'S COMPENSATION BOARD, HARRISBURG, PA.

Mr. FISHER. Mr. Chairman, I have been asked to come down here to speak on the Pennsylvania system, and I feel that, perhaps, if the committee has any questions that they would like to ask relative to our system, it would be a better way of getting at it. I have not seen a copy of this bill, and I am not prepared to talk on the relative merits of the bill. I can explain somewhat the administration of the Pennsylvania system, which does not have an exclusive fund.

Mr. FITZGERALD. I might say that it was the desire of Mr. Focht, who is chairman of the full committee on the District of Columbia, that some expert be heard from Pennsylvania on the workings, or the very satisfactory workings, as he expressed it, of the Pennsylvania plan. There has been some controversy before the subcommittee in reference to the relative merits of the different plans, all agreeing that compulsory workmen's insurance is highly desirable, but differing as to whether or not there should be a State fund, and, if there is a fund created by the State, whether or not it should be an exclusive fund—that is, in the sense that every employer should be compelled to contribute to that fund, thereby of course, depriving the casualty companies of the opportunity of competing with that fund. That is the main question before us, although I think there are other questions in regard to insuring domestic servants, and a few other details that have been discussed.

Mr. FISHER. So far as the Pennsylvania system goes, we have our insurance divided into three parts: First, we have the State workmen's compensation insurance fund; second, insurance written by private companies and mutual associations, which are authorized to do business by receiving a license from the Pennsylvania insurance department; and, third, our act grants the right to carry self-insurance by securing exemption from the workmen's compensation board. In Pennsylvania where we have very large corporations, the self-insurance feature is, of course, rather large. The self-insurers have about two-thirds of the accidents happening in the State, and there are about 480 such firms at present. The regulation of those private companies, mutual associations, and State fund, with regard to the rates, is vested in the insurance department. The administrative end of the employers' workmen's compensation act does not

have anything to do with prescribing the rates that shall be charged by the various insurance carriers. The rates of the State fund are supervised in the same manner as the rates of any private company or mutual association, that being done by the compensation rating and inspection bureau under the supervision of the insurance department.

Now, our experience in Pennsylvania has been that the State fund has measured up as a competitive insurance company, but, outside of the minimum covering charge, which is less than that of the private companies and mutual associations, we do not experience any great advantage from the fund over private companies. We have just completed a survey of 10,000 cases, which is a rather small number in Pennsylvania, and they show that the State fund, if I remember it correctly, was fifth in the order of expeditiousness in the handling of cases. It was among the first five, but other large companies have been able to render a prompter service than the State fund, while our self-insurers have a little better record than either the companies or the State fund.

Mr. FITZGERALD. Would you mind saying how many insurance companies or casualty companies were in the list among which the State fund ranked fifth?

Mr. FISHER. There were 42.

Mr. UNDERHILL. When did Pennsylvania first adopt its workmen's compensation system?

Mr. FISHER. The workmen's compensation act went into effect January 1, 1916.

Mr. FITZGERALD. So far as the service performed is concerned, the self-insurers are a little more prompt, as I understand it, than either the State fund or the insurance companies, although the State fund is sometimes a little faster than the insurance companies?

Mr. FISHER. The self-insurers in Pennsylvania have a little better record than either the private companies or the mutual associations or the State fund.

Mr. FITZGERALD. Two-thirds of the accidents occur with the self-insurers?

Mr. FISHER. Yes, sir.

Mr. UNDERHILL. Do you have a system of accident prevention in any way connected with the workmen's compensation act, or is that satisfactory?

Mr. FISHER. Yes, sir; and it is satisfactory. It is handled by the same department. The department of labor and industry handles both the workmen's compensation insurance and the inspection service, but under the department of labor and industry, one is handled by the workmen's compensation board and the other is handled by the bureau of inspection. The inspectors inspect every fatal accident, and, of course, they are at the call of the workmen's compensation board to inspect all safety appliances; that is where the self-insurance feature comes in for safety of the worker a little more than with the private company. Of course, the company is interested in seeing that its claims are adequately protected, and in seeing that all safety appliances are used, but the self-insurer, who has the entire cost, will be the first one to see that his men are safe, or he will in many cases be a little more interested in the safety of the men than the man who does not pay anything except the premium.

Mr. UNDERHILL. Do you find that the accidents have been materially decreased by this self-insurance feature?

Mr. FISHER. I would not charge it directly to the self-insurance feature. I say that workmen's compensation as an entire proposition has been very much responsible for the reduction in the number of accidents. Mr. Chairman, am I right in assuming that the rates provided for by this bill would be controlled by the administrative commissioners?

Mr. FITZGERALD. There would be a classification of employees with their description, and the State fund or District fund would be apportioned in accordance with the risks by the commission. In the bill, as drawn here, we have provided for no competition, this being exclusively a State or District fund.

Mr. FISHER. Then, the solvency of this fund would depend upon the adequacy of the rates.

Mr. FITZGERALD. Yes.

Mr. FISHER. As charged by the administrative body.

Mr. FITZGERALD. Plus whatever the Government might do in starting it off. There is a provision of $50,000.

Mr. FISHER. Do you think that is a good provision, to permit the administrative people who are going to handle this act to supervise the rates? If they are making a mistake, then they must charge adequate rates the next year in order to get themselves out of the hole.

Mr. FITZGERALD. That is one of the features that deserves a good deal of attention. It has been argued here by a number of insurance experts that that is a very unbusinesslike way to go about it, if they are to write any very considerable liability, and that would be especially true in the case of a large catastrophe. Then, if they did not have any capital behind them, it is contended that the fund would be thrown into bankruptcy, you might say, or would be greatly depleted. However, that is something that has occurred twice, once in West Virginia, where the State made it up, and once in California, where the State had to make up $70,000 that was due by defaulting insurance companies.

Mr. FISHER. I might say this, that under the Pennsylvania system the solvency of the State fund is not guaranteed by the State in any way. It is kept solvent in the same way as all private companies or mutual associations are kept solvent, namely, through the supervision of the Pennsylvania Insurance Department which makes them charge adequate rates.

Mr. UNDERHILL. You have an insurance department?

Mr. FISHER. Yes, sir; which supervises all insurance.

Mr. UNDERHILL. And no insurance companies are allowed to write insurance——

Mr. FISHER (interposing). They are not allowed to write any type of insurance in the State without being granted a license by the insurance department. The people who have to do with the administration of the workmen's compensation law have no voice whatever in fixing the amount or the rate that the insurance company shall charge in order to adequately cover the risks or the workmen's compensation. They have the purely administrative and judicial

features, that is, whether or not a man on the pay roll is entitled to compensation.

So far as the work of the compensation board is concerned, they do not have anything to do with the insurance companies so far as their rates are concerned. It is interested in the solvency of the companies, of course, and we have never had any difficulty, especially among the self-insurers, where there has never been a cent of loss. The self-insurance feature is granted by the workmen's compensation law; and exemption from the workmen's compensation law is granted by the board, and not by the insurance department.

Mr. FITZGERALD. Do they have to give bond?

Mr. FISHER. They have to satisfy the board of their financial ability to pay those claims when they occur.

Mr. FITZGERALD. Has there been any loss in that connection?

Mr. FISHER. There has never been a cent of loss.

Mr. UNDERHILL. Taken as a whole, the self-insurance provision is, perhaps, more liberal and more satisfactory in operation than any others?

Mr. FISHER. It involves the human element. For instance, if we call on the Bethlehem Steel Co. and tell them that So and So is in bad shape, and that they have injured him, their safety department or welfare department will get the money that is due to him right away, because they are interested in getting the man back into production. They are not interested in holding them down to the $100 limit for medical expenses that is allowed, but they put them in the company's hospital, and if they have an expense of something more than $100 for a workman, they pay it. As a business proposition, the insurance companies say, "The law requires us to pay $100."

Dr. ANDREWS. Is it not necessarily true that the self-insuring employers are always the larger employers?

Mr. FISHER. Yes, sir. They are of course in a different position with reference to the safety of their workmen from other insurers. Their claims run nearly 17 years as a maximum, and in granting self-insurance exemptions we must be satisfied as to the ability of the people to make those continuous payments of nearly 17 years or to commute the remaining cases. Of course the board feels that it can only give that exemption to large firms which are in a position to handle the claims as adequately as insurance companies.

Mr. FITZGERALD. For that reason I was wondering if it were not a little bit hazardous not to exact a bond?

Mr. FISHER. These self-insurers have to periodically submit financial reports to the board, and if their financial standing becomes at all unsatisfactory they require a bond. In such cases we have required bond, and we have required them to commute claims. We commute such claims at the request of the self-insurers, but the board must be adequately satisfied that those claims will be paid.

Mr. FITZGERALD. Suppose a corporation wants to liquidate and go out of business?

Mr. FISHER. Then, it would be necessary for them to commute their claims. They may commute or pay the claims. We have had one firm to go into the hands of a receiver, but the receiver must take care of the outstanding liabilities. The act specifically provides that these claims shall be considered the same as the wages of the employee.

Mr. FITZGERALD. In other words, they have a preference?

Mr. FISHER. Yes, sir.

Dr. ANDREWS. I wanted to see if I was correct in making a comparison between the self-insurers in a State like Pennsylvania, with a competitive State fund and the insurance companies, or whether it would naturally be expected that, inasmuch as the larger establishments are the self-insuring ones, and since investigations practically always show that it is the smaller establishments which have the worst factory conditions, sanitary and otherwise, their safety records would be better. In other words, would we not anticipate that the safety records in the larger plants would be better than in the others? That is the only point I wanted to make.

Mr. FISHER. You mean that naturally in the field covered by the self-insurers the conditions would be better?

Dr. ANDREWS. Yes.

Mr. FISHER. I think so.

Mr. UNDERHILL. In other words, the big employers have the best conditions?

Mr. FISHER. It is largely a matter of education.

Mr. F. R. JONES. The $100 medical provision applies to the State fund?

Mr. FISHER. It applies to everybody.

Mr. F. R. JONES. Under the State fund they can not go beyond that limitation.

Mr. FISHER. The State fund provides for $100 medical expense.

Mr. F. R. JONES. The same as the stock and mutual companies.

Mr. FISHER. It is regulated by the same rules. The State fund in Pennsylvania is in the status of competition with insurance companies, and it does not enjoy any privilege, except the privilege to write at rates 10 per cent less than those of the private companies or mutual associations that the companies do not enjoy. Then, this covering charge for the minimum is smaller.

Mr. F. R. JONES. Its insurance rate is 10 per cent less than that of the companies?

Mr. FISHER. It has that privilege.

Mr. F. R. JONES. It has been paying dividends as high as 50 per cent.

Mr. FISHER. I think in one year it did.

Mr. BRASHEARS. Is it true that the premiums collected by the insurance companies on this class of risks in the State of Pennsylvania are subject to State taxes?

Mr. FISHER. They are.

Mr. BRASHEARS. Is the State fund subject to taxation?

Mr. FISHER. No, sir; I believe not.

Mr. BRASHEARS. Can you tell me how much in premiums the State collected last year?

Mr. FISHER. No, sir; I do not know. I do not have anything to do with the State fund.

Mr. F. R. JONES. Pennsylvania pays no taxes on its State fund.

Mr. FITZGERALD. How does it figure up? Does it amount to as much as the 10 per cent differential?

Mr. BRASHEARS. It is 2 per cent, Mr. Chairman. The point I wanted to bring out was that this insurance rate through a State

fund, by virtue of being so carried, pays less income to the State from taxation by virtue of that fact.

Mr. FISHER. Yes; it does. I have nothing further to say, Mr. Chairman.

Mr. FITZGERALD. We are very glad to have your statement.

STATEMENT OF MR. FRANCIS H. BOHLER, COUNSEL FOR THE STATE WORKMEN'S INSURANCE BOARD OF PENSYLVANIA.

Mr. BOHLER. Mr. Chairman, I must confess that I am in the same sort of predicament that Mr. Fisher was in. I was asked to come down here, but I really did not have an opportunity to see this bill until this morning when I reached this office, and, therefore, I do not know the points of controversy in it. As I understand it, there is practical unanimity as to the principle or idea of having a compensation law for the District of Columbia, and that the real point in controversy is as to whether the system adopted shall be an exclusive State fund rather than a system with a competitive State fund operating in competition with stock companies and such mutual companies as may be formed here or may be formed throughout the country; or whether, as a third alternative, there shall be no State fund whatever, leaving the field to be covered wholly by mutual and stock companies.

Mr. UNDERHILL. There are only two propositions. There is no objection to establishing a State fund in competition with other funds.

Mr. BOHLER. As I see it, the intermediate alternative is practically the question. Now, as I understand it, there is a comparatively small volume of manufacturing here.

Mr. FITZGERALD. Yes; very small.

Mr. BOHLER. The really hazardous business being practically confined to the public service utilities.

Mr. FITZGERALD. The Terminal Co. would lead, perhaps, in accidents, and then there are the car lines, department stores, one steel manufacturing concern, I think; the bakeries, and the hauling and building trades. They are represented.

Mr. BOHLER. The building trade is the principal hazardous business, I presume, and there is the street railway system. The Terminal proposition is, of course, complicated by the fact that the great bulk of the activities carried on by it are interstate in character, and could not be covered by a local law.

Mr. PROCTOR. May I offer a suggestion there? Congress having control over interstate commerce and also over the District of Columbia, I do not think that those employed in interstate commerce in connection with the Terminal here would be excluded by virtue of that fact, or that is the way it would appear to me.

Mr. BOHLER. You have an important advantage here, then, in being able to cover interstate companies as well as local ones. That, of course, would leave a considerable volume of premiums to be paid by the Terminal Co. and the various railroad companies using the terminal stations. That would increase your premium rate very greatly. There, of course, you would have a group of employers who certainly could be trusted to carry their risks without any chance of the working people suffering by reason of their insolvency.

Mr. FITZGERALD. I don't know about that. If you listen to statements of the railroads nowadays, you must be impressed by the fact that they are almost on the verge of ruin.

Mr. BOHLER. That would not affect the claims, because they would be given the same priority that is given to wages.

Mr. FITZGERALD. But they run for 20 years, or something like that.

Mr. BOHLER. I might say, in respect of the Pennsylvania compensation system, that at the time the act of 1915 was passed, or when the commission was holding its session in 1913, there was a very considerable amount of controversy and a great deal of testimony taken in respect to the comparative merits of the various systems. There was some little demand for the exclusive State fund system. We examined into the matter, and came to the conclusion, as a commission, that there was no proof of any great advantage certainly to the employee in such cases. I only look at the question of the advantages of the respective systems from two standpoints: First, the advantage to the employee; and, secondly, the advantage to the employer who insures under such systems. Of course, the advantage to the employees was a question that they had to consider—that is, the certainty of solvency or the certainty of getting the compensation during the entire period, which will be prolonged, perhaps, to 18 years. Indeed, it might be prolonged to a later period than that, because from a casual reading of this act I believe that dependent children are entitled to compensation even after they are 18 years of age, if they are physically incapable of self-support. The second point is, of course, the speed with which the adjustments are made and the promptness with which they receive their compensation—that is, the space of time which elapses between the accident or the death and the beginning of the receipt of the compensation to which the beneficiaries are entitled. Now, as to the first, in looking over this bill, I find that the Government of the United States does not seem to do more than stand behind the administrative expense.

There seems to be no provision for supplying anything additional in the event the calculations of the commission as to the adequacy of the rates prove to have been erroneous. That, of course, is one of the possibilities with any persons who are not supermen, because, after all, they are but human beings, with the sort of judgment that goes with human beings. On the other hand, we have, of course, the advantage of the statistics of the rates which are prepared by the insurance companies, and which have been approved by the insurance commissioners of the various States; so that they are not left absolutely to their own imaginings, but they have a pretty safe guide. On the other hand, there is always the chance of a catastrophe which must be taken as a set-off against that. As to that, I find no provision for guaranteeing a catastrophe reserve on the part of the Government. A catastrophe reserve can only be accumulated after some little time. If there should be a catastrophe, or should be an error in the judgment of the commissioners in the fixing of adequate premiums, there would be only one of two things to be done. One of them did occur in West Virginia, as I recall. I will ask Mr.

Hookstadt about that. Am I right in saying that the State of West Virginia had a deficiency?

Mr. HOOKSTADT. No, sir; they did not. There were two large catastrophes in the coal-mining industry, and the fund was not sufficient to pay the costs, and they did not have to pay the whole thing. They made up the deficiency by increasing their premium income.

Mr. BOHLER. That was in accordance with the German system of letting the insurance carry itself over from year to year, meeting the demands of a previous year by the premiums laid in later years. That proposition is fair if all of the employers remains exactly the same, but it is rather a hardship to be assessed a premium beyond the actual requirements of the risk in oreder to meet the demands of inadequate collections upon another group of employers who simply share with them this added cost.

Mr. UNDERHILL. In other words, the industry in which the catastrophe occurred might not be paying any premiums, because it might have gone out of business?

Mr. BOHLER. In fact, the catastrophe might destroy the business, leaving the excessive cost to be borne by what we might call the innocent industries. They might be left to bear the burden imposed by the catastrophe, which might have been due to gross mismanagement. That feature does not seem to me to be perfectly fair. I would certainly say that if such a scheme as is outlined here is kept in force, and if there is an insurance commissioner in the District who is charged with the fixing of premium rates, he should be given some supervisory power over the rate to the end that they may be adequate.

As to the question of celerity of administration of the collections, there does not seem to be any substantial advantage in favor of State funds, or, that is at least shown by our Pennsylvania experience, and the statistics which we have received from other States indicate that some have gotten to be less favorable to exclusive State funds than they had been. Our thought in providing for a State fund was this: We believed that the employers should be given the option, if they wished, to obtain the advantages that come from mutualization, and, therefore, I say that one of the advantages that exists in a State fund is the advantage of having strict mutuals, so that the employer who has paid the rates can secure by a dividend the advantage of a return of the margin of safety which must be charged initially in the original premium, and, second, that he may secure the advantage of the elimination of the procurement charge cost, which inevitably comes in writing competitive insurance.

Mr. UNDERHILL. There is also the elimination of taxes.

Mr. BOHLER. That would be a minor matter of 2 per cent. We find, for instance, that our experience in Pennsylvania has been that while the State fund has shown a very excellent record for the return of dividends—and I might say that I am the counsel for them in connection with the State fund, or am a sort of general counsel——

Mr. UNDERHILL (interposing). How much have you in the State fund?

Mr. BOHLER. The premiums are a little under $2,000,000.

Mr. UNDERHILL. And 2 per cent on that——

Mr. BOHLER (interposing). Would be $40,000. They are permitted to charge 10 per cent less, and on account of the fact of the elimination of their procurement charges, they have returned a dividend in addition of about 15 per cent, or a dividend of about 25 per cent, which makes the cost of insurance under the competitive State fund average about 75 per cent. The Manufacturers' Association of Pennsylvania has a very strong and excellently run mutual, and it has a premium income that closely approximates that of the State fund, and it has paid dividends substantially the same.

I understand there are one or two large mutuals operating, and I think both of them are Massachusetts mutuals, if I am not mistaken, which have operated quite largely within our State, and from the information I remember—I will not guarantee it because this is given you without any preparation because of the short notice I have had—I understand the dividend returns are substantially the same. They may vary a few points but they are substantially the same.

The State fund when it was first formed, the legislature recognized that in the formation of a fund before the premiums began to come in or until it became established, there would inevitably be a great many expenses which it would not be proper to charge against an infant industry, so they gave protection to this infant industry by paying the expenses of management during the first four years. The govenor was, however, given the right to declare the State fund self-supporting prior to that time, and that was done, as I remember it, about two and a half years after the fund was started, and there is now set aside from the State fund the amount which the State has already advanced it, and in the event of the State requiring it back that fund is there apart from its reserve. They have accumulated a catastrophe reserve as well, and not only an adequate reserve which we are required to keep up just as any other company would be, but we have a reserve somewhat larger than the legal requirements, and also a very substantial surplus.

Mr. UNDERHILL. Do you remember what the initial appropriation was?

Mr. BOHLEN. I think it was $150,000 a year. I know it was more than adequate to cover our expenses. We had a margin which we did not use, and it was only two and a half years before the thing was self-supporting; but what I desire to say is this: That except for the difficulty of forming a State mutual—and after all our State fund is only a State managed mutual which was promoted by the State and aided by the State in the process of formation, it really has very little difference, except in the technique of starting it, from the mutual which was formed in Massachusetts, if you will remember, at the time that act went into effect. It has acted as a corrective of excessive rates. There is no question of that. It gives an opportunity for insurance, as any other mutual would, at a lower cost. It would be extraordinary to me that more employees do not adopt that saving except there is a certain personal service obtained from one's brokers, and except for the fact I myself do exactly the same thing. I could obtain some of my insurance at lesser rates through mutual companies, but I prefer, in a way, to patronize the brokers whom I have been accustomed to deal with. They have given me a certain amount of service which on the whole, in a small matter of that sort, is probably worth the extra expense.

We did not see at that time any particular advantage to the employed classes in creating exclusively a State fund. There are certain disadvantages, in my mind, in creating a State fund and placing it

under the direction of the very persons who must determine the liabilities and rights created by such an act as this.

Mr. UNDERHILL. Here is a contingency which might arise in this District. I do not believe they have any insurance commissioner in this District.

Mr. PROCTOR. Yes; we have an insurance commissioner.

Mr. UNDERHILL. And are they very careful in the admission to business in this District of those who write insurance of all kinds?

Mr. PROCTOR. Yes, sir.

Mr. UNDERHILL. And do they exclude certain companies?

Mr. PROCTOR. Mr. Nesbitt, the former commissioner of insurance here in the District, is here, and could tell you about that.

Mr. NESBITT. The law here is rather loose in reference to the requirements of the companies that do business. They have to have certain standards and the law requires certain standards, but they are much lower than those provided in many of the States.

Mr. UNDERHILL. In that case, either the law would have to be strengthened in the District, giving the commissioners more power, or else the administration of this whole proposition would have to be through the commission which is already in existence to administer it; that is, they would have to say as to what rates should be charged.

Mr. BOHLEN. Yes.

Mr. UNDERHILL. They would have the say as to what companies might be allowed to write business; they would have the say as to how much shall be awarded to an injured employee; in fact, they would be judge, jury, plaintiff, and defendant all in one.

Mr. BOHLER. It seems to me there is no particular antagonism in the two functions, in the absence of an adequate insurance law for the District, in vesting in the compensation commission a supervisory power over insurance and the fixing of an adequate rate. That is in itself a more or less judicial function, in a way. It is an administrative judicial function requiring judgment, in which they stand perfectly impartial; but there is a certain amount of danger, it seems to me, in permitting the persons who stand in the position of defendants, to be also the persons responsible for the creation of adequate funds to meet the claims when adjusted. Perhaps, I am speaking rather as a lawyer with a lawyer's ideals, that the attitude of a judge should be entirely impartial in respect of any controversy before him.

Mr. FITZGERALD. You think, then, if possible, it would be better for the insurance commission of the District to fix the rates for this compensation so that there would not be a tendency on the part of the commission on workmen's compensation to charge either excessive rates or to be very stingy and niggardly with the employees.

Mr. BOHLER. Yes. You see there might be one of two things; either they might charge excessive rates in order to make their fund absolutely certain, or having made inadequate rates, they would desire to cut their coats according to their cloth.

I notice one other thing in this bill which I think seems to be inseparable from this form of insurance act. There is in every compensation act certain questions which come up and which determine very largely the amount of burden to be borne by employers and the amount of benefit to be obtained by employees. I think no one, even the employee himself, would desire to get more than the law

is intended to give him. Whatever interest they have should be to get a law which gives them a good deal and not have an unjust interpretation of the law. In this case, I notice that there is a right of appeal on the part of one who claims he has not received enough, but there is no right of appeal on the part of the employers who are affected by an interpretation which the board may cut upon the act to determine whether or not——

Mr. ANDREWS. Yes.

Mr. BOHLER. As I say, I have read this bill very casually. Mr. Andrews does not seem to agree with me. I find no provision where the employer since he is no longer a party to the liability, having paid his premiums, can question the ruling of the board which may perhaps give an interpretation which, being in excess of what a court would sanction, really increases the burden beyond that which the act is intended to impose. I may be in error as to that because, as I say, my reading of the bill has been somewhat casual. I find in section 17 that "within 30 days after filing his appeal the appellant shall file a petition in the ordinary form against such commission as defendant," and that the award shall be final and conclusive "unless within 30 days after notice of the final action of such commission either party appeals."

Now, what other party there is in this case, I can not make out. There is no other party provided because the claim is against the insurance fund itself.

Mr. ANDREWS. It is obvious that it is not the commission.

Mr. BOHLER. If it is meant that the employers shall regard themselves as the other party, it should be so stated, because the word "party" there means nothing. It would normally mean a party to the litigation.

Mr. FITZGERALD. Either party in this sense could not be construed in any other way than either party to the litigation.

Mr. PROCTOR. I think you will find that is very general phraseology with reference to a prosecution which practically means nothing, because there is no existing law which permits an appeal to the court from administrative agencies of the Government. The only method of review is now by the common-law method of certiorari or mandamus, which are purely of a jurisdictional character and do not at all review the merits of the case. So that when I made my point the other day of there being no right of appeal, I have no thought now that this provision which has been cited would in any way qualify that statement.

Mr. UNDERHILL. Do you make an allowance of 66⅔ per cent of the wage?

Mr. BOHLER. We make ours at 60 per cent, and our maximum is very far below this.

Mr. UNDERHILL. How much is it?

Mr. BOHLER. The maximum that can be recovered is only $12. Personally, without committing anyone else, I am inclined to agree with you that under the present wage rates——

Mr. UNDERHILL (interposing). It is too low.

Mr. BOHLER. I am inclined to agree with you, but it was all we could get for the workmen at the time.

Mr. FITZGERALD. I quite agree with you, Mr. Bohler, in regard to this matter, that the appeal here seems to be limited to a controversy

over the award of the commission and that either party there would probably mean the commission or the individual.

Mr. F. R. JONES. Yes; that is what it does mean.

Mr. FITZGERALD. And there is no provision here for any appeal for the employer against what he would consider an exorbitant rate.

Mr. BOHLER. Or a construction that would affect the rate to his disadvantage. I think it is a matter of minute criticism, that perhaps should be corrected.

Mr. FITZGERALD. I am turning over in my mind the advisability of an appeal to the courts on a question which should be settled by actuaries and insurance people.

Mr. BOHLER. But this is a question not of the adequacy of rates. We have had an act which we had tried to make so clear as to avoid litigous questions, but we have had, I suppose, 50 important questions of law which have had to be passed upon by the Supreme Court in reference to the construction of certain phrases. Some of those, if they had been decided in favor of the employee, would have increased the rates quite considerably, whereas if they had been decided in favor of the employer would have decreased them. I think that questions of interpretation should not be left, finally, to any merely administrative functionary, no matter how competent. There should be, I think, an appeal to some of the courts to construe the meaning of the act, not to apply it to the facts where the application depends upon certain findings of facts.

Mr. UNDERHILL. We had the same experience in Massachusetts. They thought they had an ideal bill there and they found that before they could get the legislature to pass additional laws to cover the case, that the commissioners themselves had to obligate themselves to $84,000 of money which they paid out of the fund, which could not have been paid under the provisions of the bill. Afterwards the legislature corrected it and made it retroactive, so it was all right, but it was just such a lapse as this which caused that difficulty and trouble.

Mr. BOHLER. In any State fund which has a limited field, such as this has, and where the premium income is not very large, there is always danger of insolvency during the first period by reason of a catastrophe which I think perhaps is exaggerated. It has been cared for before. In the West Virginia case it was cared for by a proceeding which does not seem to me to be altogether just—that is, charging upon the next year's business the losses that have occurred in the previous year's business, when perhaps the employers are a different group. The adequacy of the fund must depend, under this act, on the judgment of the commissioner, and while I believe that the commissioner will probably fix rates which are superadequate in order to guard against this, I notice one thing in this act—I will not say "I notice" it, because I have not read it attentively enough to pick up everything, but on reading of it I can not find any provision whereby there is the right on the part of the commissioner to return overadequate premiums or to declare a dividend out of a surplus which is unnecessary for the reserve.

Mr. FITZGERALD. If you will permit, Mr. Bohler, I want to say that this committee will welcome any criticism like that which you may not only be prepared to give us now but if you take the time to look over this a little critically, we will appreciate very much a letter from you on the subject.

Mr. BOHLER. I will be very glad to do so.

Mr. FITZGERALD. The last matter you suggest is with reference to the right to declare dividends, etc.

Mr. BOHLER. Yes. That seems to me very important. There is another important feature which I think ought to be included, and that is, I find no direct sanction for any system of merit rating. When you permit or require the compensation liability to be recovered by insurance, the only incentive of enlightened self-interest which you can impose upon employers for better safety conditions is by making the money expended in safety devices and the installation of safety systems, including discipline systems, which after all are more effective than mere mechanical devices, is to show them how they can get that money back and a little more in the saving of liability. Of course, that operates in the case of self-insurance directly. They can see the return there because an increased number of accidents increases their liability, but in the case of insurance, it must be shown through merit rating.

Mr. UNDERHILL. I would like to ask Mr. Jones if the insurance companies take that into account in writing insurance.

Mr. JONES. A trolley car was passing and I did not hear that. Will you kindly state that again.

Mr. BOHLER. We were discussing the question of merit rating. We have in Pennsylvania rating inspection bureau by which all policies are submitted to a central authority so that the ratings shall really be done impartially and shall not be a mere opportunity for illicit rebating; and there is a system of merit rating which I have not, I regret to say, kept myself up with, which does allow for a very material cutting of the premium. It used to be on the mere installation of adequate safety devices and the mere installation of an adequate discipline system. I think now it has turned itself rather into an experience rating, so that a company which has for a number of years shown a superfavorable accident experience is entitled to a material deduction from its premiums. You can see that that is a very great incentive to the elimination of accidents.

Mr. FITZGERALD. May I ask you whether you know of any publication, pamphlet, or anything of that sort, setting out some practical ideas on the workings of merit ratings?

Mr. BOHLER. Of course, we are all inclined to favor our own people and I am inclined to think that Mr. Downey, the deputy in charge of workmen's compensation insurance under the insurance commissioner of our State, would probably be able to give you a better idea of a proper merit rating system than anyone else, at least in my State, and to work out those details for you, and also Mr. Robertson Jones.

Mr. F. R. JONES. The companies have worked out a very thoroughgoing system in connection with the merit rating plan, both physical examination of the properties and through experience, and suggested improvements in various factories and giving credit for this and that. It is a very thoroughgoing system. Of course, in some instances the rate suggesting power, or what is known as the national workmen's compensation service bureau, has been taken over by some of the

States, like in the case of New York, where there is a regular rate and classification bureau, a semi-official bureau in New York State, that does this inspecting of these factories and gives credits for this and for that and enters into the subject in the greatest detail. Furthermore, the National Council on Workmen's Compensation has pretty generally taken over the matter of rate classification, rate merits, and that council represents all these insurance carriers, State insurance funds and stock companies and mutuals. They are doing that also in other States. Pennsylvania is doing a great deal in that direction and the various boards in various States are doing work of that kind.

Mr. FITZGERALD. May we ask, Mr. Jones, whether there is a compilation or pamphlet of any kind setting out that work?

Mr. F. R. JONES. There is, Mr. Chairman, and I can furnish you with that. There is a very thoroughgoing pamphlet on that subject and I will be very glad to get it for the committee.

Mr. BOHLER. If I may make a suggestion, I have had a little experience in drafting this form of legislation, perhaps it would be adequate to merely provide that in the making of the rates the commissioner should be permitted to adopt a system of merit rating, by experience or otherwise, leaving it to him to determine which of the methods is the best one. I think that would quite adequately cover that matter.

Mr. UNDERHILL. There is one other question I want to ask you. What is the interval or waiting period in Pennsylvania.

Mr. BOHLER. It was 14 days and it is now 10 days. I am inclined to think that that also is perhaps a little high.

Mr. UNDERHILL. Has any effort been made through legislative enactment to increase that maximum of $12?

Mr. BOHLER. Not this year; no, sir. Two years ago, in 1919, there was a very unfortunate misunderstanding which, perhaps, prevented due consideration being given to the recommendation of the board that the maximum should be increased to $15, I think it was, which, I think, was a minimum maximum, if I may call it so.

Mr. UNDERHILL. They recommended it, however. That is what I wanted to know.

Mr. BOHLER. Yes; the board had recommended it, and there was some misunderstanding as to the holding of public hearings, so that the recommendations of the board were taken to be partisan and were rejected in toto.

Mr. FITZGERALD. There has been some criticism here that even the rates fixed in this bill are not sufficiently high, and yet they are more liberal than perhaps in any other State now.

Mr. BOHLER. They certainly are as liberal. I do not know what the present Ohio rates are, but I think they are as liberal.

Mr. F. R. JONES. This bill is certainly as liberal. It is more liberal than the Ohio law.

Mr. BOHLER. Mr. Jones, you have made a greater study of the cooperative benefit question than perhaps anyone else. Do you know of any other act which is more liberal?

Mr. F. R. JONES. I think that this bill here, which is the North Dakota act, is more liberal than any other, because it includes, for instance, domestic servants.

Mr. BOHLER. I think that is admirable.

Mr. F. R. JONES. And for a great many other reasons this is probably the most liberal one. I would place them in this order: This bill, the New York law, and then the Ohio law.

Mr. PROCTOR. Mr. Bohler, would you explain to us in a word the class of employees included within your law?

Mr. BOHLER. I would prefer to come to that after I have dealt with this question of a competitive system. I think we can say that we have seen nothing since the act has gone into effect that has led us to believe we made any error in not installing a State fund which was identified with the administrative board which adjudicated the claims. We believe we have gotten better justice, a more impartial view, by having the State fund completely divorced from the judicial tribunal which has adjudicated or adjusted the claims. We can not find any reason to change our views as to that. We have seen no disadvantage to the workers of the State from the present system. I have come in touch with a great many of the workmen's organizations who are interested in the enforcement of rights under this act, and there has been practically no demand for an exclusive State fund, except from some few on the western end of the State, who, perhaps, are influenced by the infiltration of Ohio ideas.

Mr. ANDREWS. Do you happen to know whether the organized labor workers of the State have adopted a resolution urging the Ohio plan?

Mr. BOHLEN. That I do not know. I know that before the legislature two years ago we had at that time a great number of conferences with the labor leaders who were interested in it, the American Federation of Labor, and there was no expression of a demand for that two years ago.

Mr. ANDREWS. I notice they have adopted such a resolution.

Mr. BOHLEN. They had no complaint over the adjustments, as a rule. They have won invariable complaints as to the physical examination, which it is impossible to enter into now.

On the other side of the shield, the question of the advantage to the employer, I do feel that the employer should have some alternative to the ordinary stock insurance. The question is whether or not that can be obtained in the District of Columbia without creating an exclusive State fund, and if there be an exclusive State fund whether that State fund would be really much cheaper.

Mr. UNDERHILL. They would still have the opportunity of insuring with mutuals.

Mr. BOHLEN. That is what I was going to suggest. There are a number of mutuals of undoubted solvency having a wide covering, which gives the opportunity to spread over the various risks. The greater the business, the more chance of doing that.

Mr. UNDERHILL. Is there any opposition in Pennsylvania to the self-insured feature on the part of labor or labor unions or organized labor?

Mr. BOHLER. There have been some few complaints with respect to the difficulty of controlling the larger employers in one particular and that is their discrimination against partially disabled men. There is that problem always, and unless it is carefully guarded there is always the chance of a man who is physically able to labor,

but who has a physical disability, which will make him, perhaps, more subject to accident, to be denied employment for fear that his employment will entail a greater compensation liability risk. We guard against that in our insurance act by providing that the premium charged by the State fund, mutuals, or stock companies, shall not take into account the physical condition of the laborer or the number of persons who are dependent upon him for support. In certain times when there is a great glut of labor they discriminate in favor of the foreign worker who comes over here himself as against the domestic who generally has a family to support and who instead of receiving $100 for burial expenses would receive six or seven hundred dollars for compensation. Whether that is always lived up to or not, I am not certain. Sometimes in the application for self-insurance we require the employer to promise that he will not so discriminate. Nearly all the employers of the State have made that promise and, in generai, live up to it.

The question really as to whether or not a State fund in the District of Columbia would be profitable depends upon the amount of the premium income. There is no question about that. If the premium income is small, the administrative cost which remains practically constant up to a certain point would be, of course, a far larger percentage of the premium income than it would be if there was a very large volume of premiums. I do not know what the estimated premiums in this District would be. The exclusion of the railroads and the denial to them of that right in case of self-insurance, a right which is not even denied in Ohio, would, of course, make a very much smaller volume of premiums.

Mr. ANDREWS. An excluded fund?

Mr. BOHLER. Yes, sir. I think there is no question but what you can not have a competitive fund here. I do not think you could possibly get a fund which would require a certain bulk business in competition with stock companies, self-insurers and the mutuals which operate throughout the Nation to make it a profitable enterprise: I do not think there is any doubt about that.

Mr. F. R. JONES. You would have a separate office under a monopolistic fund in the District operating with a fund of a few hundred dollars in premiums as against stock companies operating throughout the country with over $100,000,000?

Mr. BOHLER. That is true. You would have the elimination of the procurement charges. In fact, with a State fund the procurement charges are negligible as compared with the charges of a stock company.

Mr. F. R. JONES. When you take the stock companies and the mutuals throughout the United States they have a temendous coverage from experience which acts as a safety valve or a safety guard?

Mr. BOHLER. Yes, sir.

Mr. F. R. JONES. Capital, surplus, reserve, and so forth, and as against them you would have a small State insurance company here with relatively only a few hundred dollars?

Mr. BOHLER. I do not profess to be an expert, because I am not.

Mr. ANDREWS. Have you had catastrophes in Pennsylvania?

Mr. BOHLER. We have as yet had no catastrophes in our State fund. We have reinsured the catastrophe risk with Lloyd's, since none of the others would take it. We have never yet been called upon to make up one. There was a catastrophe in the self-insured mines and one or two accidents have been very close to the limit.

Mr. ANDREWS. The regular casualty companies would not take the reinsurance?

Mr. BOHLER. We have put the reinsurance with Lloyd's.

Mr. BRASHEARS. Do you think the District of Columbia is sufficiently large to establish a State monopolistic fund for hazardous occupations?

Mr. BOHLER. It would be impossible for me to say without knowing the amount of the premiums. I can only say that the chance of the size of the dividend would necessarily prohibit that, whether it would afford that amount of business or not. If there is only a premium income of $200,000 and you have an office charge for writing the premiums and for administration which could not go below a certain minimum, undoubtedly a small premium income would cut down the amount to a very much smaller figure than would be earned in a company like one of the Massachusetts mutuals which operates throughout the whole United States, and I should say, personally, that it would be to the interest of the employers, in respect to saving on their premiums, to insure in a company, a nation-wide mutual, with a very large coverage as against a State fund restricted to a district with so small an amount of premium income. With respect to what I believe to be a very admirable plan, I would say that in our original act we covered both foreign and domestic employees, the act passed the house of representatives at Harrisburg, but failed in the Senate by a very narrow majority.

When the matter came up in 1915, it was felt that some part of the opposition to it might be eliminated by the passage of a supplemental act which exempted agricultural employees and domestic servants. For that reason and for that reason only, not because the people favored this, but the governor and the powers behind the act felt it wise to pass this supplemental act.

Mr. UNDERHILL. In other words, they wanted some relief from the intolerable conditions, and you were willing to compromise to a certain extent by eliminating the farm employees?

Mr. BOHLER. And the domestic servants. As to the domestic servants, while the risk is not great, the premium is low. Just on that point, it occurs to me that while the premium is low, it is entirely too high in proportion to the expense of writing. I think that could be eliminated, just, perhaps, a mere detail, by making the coverage extend over a period, instead of one year, three or five years.

Mr. FITZGERALD. The difficulty here in Washington is on account of the changing of the population—one is not here over about four years.

Mr. BOHLER. Yes, sir. You could possibly spread it over two years.

Mr. FITZGERALD. Mrs. Ransome, of the Housekeepers' Alliance, is studying the matter of domestic servants very carefully with the idea of making a report both to the committee and to her organization. I should be very glad to have you touch upon that matter. I understand it is in the New Jersey act.

Mr. BOHLER. It is a code.

Mr. FITZGERALD. We understand also that it works very satisfactorily.

Mr. BOHLER. I have heard no dissatisfaction at all. A very significant thing, at the last session of the legislature some very prominent farmer organizations appealed to me to take the initiative of having that exemption of the farmers removed. At that time we did not feel like courting anything like that, but I really think it is a matter worthy of a great deal of consideration to determine whether anything is gained by a monopolistic fund. Under the conditions existing in this city there is no vested right in writing insurance in a field which has not created any demand, and there is something which appealed to all of us, that there should be an opening for individual initiative, because unless there is something really to be gained, unless there is a field for profitable enterprise, there is no opening for persons who desire to utilize their brains and popularity, which is very largely the case in the insurance business.

Mr. F. R. JONES. With regard to this matter of premiums, I am advised that the employers' liability premiums in the District of Columbia are under $150,000.

Mr. BOHLER. The total amount?

Mr. F. R. JONES. Yes, sir.

Mr. BOHLER. That would not include, however, the railroad activities, and I doubt very much whether they would be brought under this, because they are well satisfied.

Mr. FITZGERALD. You heard Mr. Kelly speak this morning?

Mr. BOHLER. I would think that he speaks for his people.

Mr. KELLY. The railroad organizations absolutely are for this.

Mr. BOHLEN. Our experience in Pennsylvania has been that wherever the railroads are willing to adjust the basis of the workmen's compensation and the Pennsylvania Railroad is, the railroad employees have been very glad to make those adjustments, both in case of injury and death. We have passed informally upon thousands of claims between the Pennsylvania Railroad and their employees and have adjusted them under the compensation act.

Mr. UNDERHILL. I would like to ask a general question. I should like to ask how many here are opposed to a compulsory workingmen's compensation act. If there are any present, I wish they would raise their hands. [After a pause.] There is no one here who opposes a compulsory compensation act.

Mr. FITZGERALD. I should like to ask further whether there is anyone here who knows of any interest or any person, employee, employer, or otherwise who opposes it. [After a pause.] We will take it then that the need of a compulsory workmen's compensation act is universally recommended for the District of Columbia.

We had hoped to have one more hearing. There are several persons whom the committee would like to hear from, if it can be so arranged, among others an expert from Massachusetts who may be here, and possibly one from New Jersey, Mrs. Ransome, Mr. Edgar Wallace, representing the Federation of Labor, Mr. Hoage, and Mr. Keegan, if they care to be heard.

Is there any other source of information available to the committee that has not been touched upon?

Mr. FISHER. I have heard reference several times to the fact that this law is based upon the law of North Dakota. A commission from the State of North Dakota visited our office with a view to adopting the system of administration as used in Pennsylvania. They went over the system and they decided to take back with them the administrative procedure that we use.

Mr. PROCTOR. Just a moment, if I may. You will recall the specific objections that were made by me last week, and in connection with that I thought it might be helpful to the committee to present a bill which would overcome that objection.

Mr. FITZGERALD. The committee will appreciate that very much.

Mr. PROCTOR. In that connection and in getting the data upon which to do that, I find that in the Sixty-fifth Congress Mr. Crosser, of the District Committee, presented a bill, H. R. 12284, which seems to follow the conservative and safe bills of the other States, probably based upon the New York and Maryland laws in substance. Of course, as to the scope of the employees and benefits I have not attempted to go into that; but I have found that it does carefully include provisions which meet all the specific objections made by me in my argument last week.

Mr. FITZGERALD. That is H. R. 12284 of the Sixty-fifth Congress?

Mr. PROCTOR. Yes, sir. May it please the chairman, I have gone over it and made certain suggested amendments of a minor nature and certain observations, thinking it would be of interest to the committee. May I file this copy?

Mr. FITZGERALD. We shall be glad to have it.

On behalf of the committee and on behalf of the American Nation we want to thank especially the gentlemen who have so kindly come here at the expense of either themselves or their States and have been so kindly disposed to give the results of their experience and knowledge. I refer to Mr. Fisher, Mr. Bohler, Gov. Hart, Mr. Kelly, and to a number of gentlemen who are here who have not yet been called upon, Mr. Wallace, and others.

(Thereupon, the subcommittee adjourned to meet on Thursday, May 26, 1921.)

SUBCOMMITTEE OF COMMITTEE
ON THE DISTRICT OF COLUMBIA,
HOUSE OF REPRESENTATIVES,
Thursday, May 26, 1921.

The subcommittee this day met, Hon. Roy G. Fitzgerald presiding.

Mr. FITZGERALD. The committee will be in order, and we would like to hear first from Mr. Kennard, of Massachusetts. You are a member of the Industrial Board of the State of Massachusetts?

STATEMENT OF MR. WILLIAM W. KENNARD.

Mr. KENNARD. It happens that I am chairman of the Massachusetts Industrial Accident Board, but I hope the committee will appreciate that in appearing here this morning I speak personally, without warrant from my commission and without, of course, any warrant from the public authorities of Massachusetts to be here. Incidentally, I will say that I am only here because it happened that I was in Washington on other business and was asked if I would come

before the committee and state something about the compensation law as it is administered in Massachusetts.

I have had the experience which has come through four years' service as chairman of that board, prior to which I was chairman of the house committee on judiciary of the Massachusetts Legislature for three years, and before that committee came all the bills having to do with workmen's compensation, numbering anywhere from 40 to 50 each year, and upon each of which a hearing was given before our committee. During one of the summer recesses I also served as chairman of the legislative committee which investigated the subject of compensation insurance. We made a written report to the legislature of what our conclusions were. I speak of that because of the bearing it may have upon the experience I have had in making the observations which I shall make in the course of the few minutes that I address the committee. As I said before, I am speaking purely personally, but with such personal information as the experience I have outlined gives me.

Our Massachusetts method of conducting compensation insurance while not unique is, I think, followed by but two or three of the States of the Union. Under the Massachusetts law the business is done entirely by the insurance companies. We do not have a State fund and we do not permit self-insurance. All the business is done by insurance companies. There have been various efforts made from time to time to supplement that method by the creation of a State fund, by the permission of self-insurance, etc., but since the act was established in 1912 those efforts have never resulted in changing the law.

In the first instance our law provided that the business should be done by what was known as a State mutual company, and that was to be the exclusive carrier of compensation insurance. It was a company in which all who adopted the provisions of the act—because our act is elective—should join and become subscribers in one company. That company was to be controlled and its affairs managed by a board of directors appointed by the governor and, to a certain extent, it was to be under State supervision. It was not a State fund except in so far as the State exercised that supervisory function, which was represented by the board of directors and by certain provisions made applicable to that company. The company started in to do business; that is, it was formed, but I do not think they ever did business as such. However, it is sufficient for our purposes here to say that they ceased to exist and gave up whatever rights they had acquired, if any, under that company and became a State mutual company, organized under the general laws of Massachusetts.

That company changed its name from the Massachusetts Employees' Association and is now known as the Liberty Mutual Insurance Co., which is doing business not alone in Massachusetts but in other States, and is a mutual company. The act, as I say, provided that when it went through the lower branch of our legislature, but before it was enacted into law an amendment was made which provided that insurance companies should also be permitted to write business in competition with the so-called State company. I have already indicated that the State company never really functioned as such and it is now out of existence, so that we are now left with the business done by the insurance companies and without competition of any kind except between themselves. As a matter of fact, there has been very keen competition in Massachusetts, I think it is fair to say, between the stock companies and the mutual companies, and many controversies have arisen between them of one kind and another. We have no supervision with reference to rates except that the insurance commissioner shall provide that the rates shall be adequ te. As a matter of fact, the insurance companies all make the same rates, with such advantages as come to the policyholders in the mutual companies by reason of the dividends which they may receive. That system has worked out, I think it is fair to say, very satisfactorily in Massachusetts.

I think I can say without fear of denial, although it is a personal deduction of my own, that the insurance companies in Massachusetts have, to some extent, been kept in line, if that was necessary, by the fact that there was hanging over them the possibility of additional competition in the form of a State fund. Self-insurance does not trouble the stock companies but worries the mutuals a good deal. But that constant and ever present threat, we have always had a feeling, served as a very helpful factor in keeping the stock companies and the mutuals in a proper frame of mind.

With reference to the administration of compensation insurance, I have had no experience with State funds. When I was on the special commission, of which I spoke, I recall that we went to Ohio, went through their plant and talked with them. Mr. Duffy, of Ohio, was in Massachusetts last year and tried to convince our legislature that the Ohio plan was the one we should adopt, but as far as any reaction was concerned, as indicated by the vote of the legislature, his progress along that line was slow. We feel in Massachusetts, naturally enough—and I suppose every State has the same feeling—that our law, while not perfect, has worked very well. There have been no expressions of dissatisfaction with it as such. Of course, there are isolated cases in which criticism is made, but upon the whole the system is, I think, satisfactory to the employees, it is satisfactory to the employers, and the public, which does not know very much about it any way, is generally satisfied and is not concerned until some one creates a disturbance which dissatisfies them, and that has not occurred in Massachusetts.

One of the principal things which I see in my actual day-to-day work as chairman of the commission and as a member of it is that our system leads to a just and evenly balanced administration of the law. Our board in its principal functions is a judicial body. Our principal work is the settling of controversies which arise between employees who have been injured, and believe that they are entitled to the benefits of the act, and the insurance carriers. As such we hear both sides of the case and we attempt to reach a determination which is in accordance with law and justice. Of course, the act as administered in our department—and Mr. Hookstadt, who is here in Washington, can possibly give you some idea of whether or not we are accomplishing that—in the State of Massachusetts we feel that we do, under our administration of the office, bring home to the employee what his rights are and that we have the machinery there which in most cases accomplishes the result of getting to the employee what he is legally entitled to. I said it was justly and evenly administered.

I anticipate that the strength of any law depends upon the justice with which it is administered. I am one of those who believe that the public has just as many rights in seeing that a workmen's compensation law is properly administered as the workmen, no more and no less. Either one of them should know what he is entitled to under the law, and if the law is not correct it ought to be changed. I naturally do not claim any discovery in that statement. There is one thing we feel we accomplish, which is an extremely desirable thing, perhaps a most desirable thing under any compensation act, and that is speedy settlement of claims. We have a waiting period of 10 days

Since I have been on the board I do not recall having had called to my attention any case in which there was a clear liability and an admitted liability in which the insurance company has not taken speedy action on that claim. There may have been a few cases, due to some mistakes in the offices of the insurance companies, where claims have not been taken up and paid. Under our law the first payment comes 17 days after the injury, and I think it is fair to say that we have no complaints in Massachusetts about delays in payments following the injury, unless they are delays in accordance with the law. That is a feature which I should imagine would be extremely important. You never realize the importance of a thing until it is absent, and it not having been absent it has not been brought home to us, and I suppose that would be a feature of the Massachusetts law which would be extremely favorable to its reputation. We have comparatively few fraudulent claims. There, again, the presence of the insurance companies tends to bring that about. The insurance companies are guarding against it; they are putting out their money; they are investigating the cases very carefully; they have their offices distributed throughout the State; they have their district agents, and they have their field and investigating force, with the result that claims are checked up and evidence is easily procured as to the justice of a claim, with the result that if a matter goes to a controversial point the commission has the benefit of two sides of the case; they have not only the employee's side but they have the insurer's or public side, because the standpoint of the insurer and the public is just the same.

In my experience in the Massachusetts Legislature I have discovered that the matter of rates, benefits, and all that sort of thing is of very little moment to the insurance companies. All they want to know is what the benefits are going to be, and you may trust them to make their premiums accordingly. So when we speak of the insurance companies it is the public, because they are paying the premiums. In the first instance, the manufacturers pay the premiums, but I suppose the manufacturers may be trusted to pass them along to the public in proper form. Another thing that results from administration by the insurance companies in Massachusetts, as I see it in my day-to-day work—and I trust I will not be accused of holding a brief for the insurance companies, because I am not here for that purpose; I am here to speak in justification of the law of the State from which I come, of which I am a native, and of whose institutions I am very proud—another thing which I find in my day-to-day work is brought about is the elasticity of settling claims. We have conferences between representatives of the insurers and the employees, and whether or not a man is entitled to compensation

is a matter of considerable doubt and whether he is entitled to a further extention of compensation is a matter of considerable doubt, and I am frank to say that I see cases almost every day in which, if I were a State commissioner or the guardian of a State fund, if you please, charged with the responsibility of seeing that money properly disbursed—I see cases day after day in which I would not feel that I could pay out the State's money, but in which cases the insurance companies pay.

They do that for reasons which I will not attempt to analyze, but the fact remains that they do it. I do not mean to say that they pay claims without merit, but I mean to say that in claims where there is a certain amount of merit but a doubtful liability or a doubt as to what should be the conclusion, that they will enter into an arrangement of a compromise character which, being as they are under the guidance and suggestion of our board, is pretty apt to be beneficial to the employees. The insurance companies, as they have operated under the law in Massachusetts, have taken action which has been very satisfactory about that sort of thing. That may be their action because of the threat which hangs over their heads, of which I spoke when I first started, but how far that is a factor in the matter I do not know.

Another thing which is brought about by the insurance companies doing business is a follow up of the cases. As I said before, they have a large number of field workers and they follow up the cases; they follow them up not only from the standpoint of seeing whether they have reached the end of their rope compensation wise, but they also follow them up to see whether their physical condition is improving in the way that it should.

While our act provides that medical attention shall be given but for the first two weeks, the insurance companies have found that it is for their financial benefit in many cases to pay beyond that; in fact, some of the companies—and practically all of them in Boston—have their hospital connections and some of them even have young hospitals in their own headquarters at which they treat employees. They have learned, what must be a self-evident fact, that the sooner a man gets better and gets back to work the sooner they cease to pay him compensation. The insurance companies themselves have worked that out. Then they have been very helpful to the board and to the employees in procuring work for men who have been thrown out of employment and who may not be able to go back to the job from which they came. As employment agencies they have done a great deal for the employees. In that connection they also do a work which is hard to put your finger on but which must bring back some dividends. I refer to safety work. They require of their policyholders a certain degree of care in the attention which they give to their premises, to the end that losses shall be reduced to a minimum, and they have safety engineers connected with their companies who go around and do that sort of work and do it in a way which, I think, inures to the benefit of everybody concerned, including themselves, which is always the case. I do not know of any of the insurance companies which are run on an eleemosynary basis. They do all of these things because, in some way or other, they believe it is a question of policy or a question of financial management from which in the long run they are going to profit. That

is not necessarily a matter of criticism, and the only thing I am interested in is as to what effect it has upon the administration of our law and what results follow from it.

The committee, which I spoke of as having been a member during the recess, brought in a recommendation that the insurance companies, the stock companies and mutual companies, be relieved from doing business in Massachusetts further, and that the business be done by a single mutual company along the lines contemplated by the original act, except that instead of having State control of that mutual company, leave the control in the hands of the policyholders. I speak of that because of the opposition which was created to it, and that opposition seemed to center itself in the minds of the employers, of whom a great many appeared before our committee after our report was filed, around the fact that the employers were very desirous of having a certainty of cost about their insurance, but that, perhaps, is not a thing that I should say now because it is not within the matters that I have to speak about here. Under our act the moment an employer takes out a policy he ceases to be a factor in the case; although the insurance company may thereafter become defunct there is no liability upon his part. It is contrary to the usual insurance contract in that respect, in that the employers steps out of the case altogether.

That leads to this result in any event, that there is an absence of friction between the employer and the employee with reference to accident cases. He has paid his premium and if there is any tendency whatever—and there is a slight tendency in that direction—it is for the employer to line himself up with the employee against the insurance company. Having paid his premium he desires that the man who is the beneficiary of that premium shall receive what is coming to him, and we find, generally speaking, that the employer will be found upon the side of the employee, and it is not uncommon for a representative of the employer to come to our hearings and to our conferences in order to see that the employee is properly dealt with and receives what he should receive. Under the act the only competition which we have is that of service by the stock companies and the mutual companies. There is a difference in the premiums between the stocks and the mutuals in Massachusetts which, I think, nets the subscriber in the mutual company about 20 per cent; they get back, I think, 30 per cent of their dividends, but in the first instance are charged 10 per cent more than do the stock companies, with the net result that at least up to date the subscribers in the mutual companies receive a net premium of 20 per cent less than those who go into stock companies. I am not sure of that, but I think that is correct.

Mr. FITZGERALD. You say they charge 10 per cent more?

Mr. KENNARD. Yes, sir.

Mr. FITZGERALD. And then they get back 20 per cent?

Mr. KENNARD. They get back 30 per cent.

Mr. FITZGERALD. So they are 20 per cent better off than those in the stock companies?

Mr. KENNARD. Am I correct in that, Mr. Jones? Mr. Jones has appeared many times before us, so that I know him quite well.

Mr. F. R. JONES. I think that is substantially the case.

Mr. KENNARD. Under those circumstances you might expect that everybody would insure in a mutual company, and the fact that they do not may be some evidence that service is of some attraction to them. In any event, that has always been the cry of the stock companies, that they give the service, and they have managed to convince a very large portion of the insuring public in Massachusetts, at least, that that is so. At all of our hearings it has developed that the employers want that; whether they ought to want it I do not know, but the fact remains that they do seem to want it, and they have insisted very strenuously that they should be permitted to have it. Of course, up our way, which is a manufacturing community, the moment you say anything about Government control to them they get alarmed, to say the least, and they do not fancy it.

Our board has but one function to perform. We are not mixed up in the safety work and, as a matter of fact, we do not have the safety work to look after. We have but one thing to do and that is to see that the compensation law is properly administered.

Mr. UNDERHILL. But the accident prevention formerly rested in the board.

Mr. KENNARD. Originally it was vested in the board, but we have a department of labor and industries up there, which has to do with all labor matters, the inspection of factories, and all that sort of thing. They had their inspectors out, and then our board had inspectors out. This was before my time on the board, so that I can not tell you the entire details of it. But the inspectors of the industrial accident board would go around and then the inspectors from some other division would go around, and it finally got so that the manufacturers came to the conclusion that they were running their business for inspection rather than anything else, and the work was then merged between the two bodies, between the board of labor and industries and the industrial accident board, with the result that neither one of them did it very well. Then it was turned over to the board of labor and industries and there it rests now, and they are doing it and, I believe, doing it well. But so far as we are concerned we have nothing to do with it, and our work is solely that of administering the act. We have a very strong feeling that that is a very strong feature of our law and that if we are able to do that one thing well we certainly justify our existence.

That that view is somewhat acquiesced in by the legislature is perhaps shown by the fact that when the constitutional convention of two years ago provided that some 120 commissions in Massachusetts should be reduced to not over 20, that our department was made one of those that survived, and we were the only department that was not merged or otherwise affected by the reduction in the number of commissions from 120 or 121, as I recall it, to 20, and it was done because they recognized that our commission had a particular work of its own to perform; that it was sui generis, and that it should be left to perform that class of work alone.

Our board has six members on it, and under the statute we are required to give our full time to the work. The members of the board are appointed, one each year, by the governor, and there has been no change in the personnel of the board for the last four years with the exception of one. There were formerly seven members, but there are now six. Upon the expiration of the term of one member the

board was reduced to six, but there has been no change in the personnel. Three of the men who are there, whose politics were not Republican, have since the Republican administration came in been reappointed by a Republican governor. I do not know what would happen if the Democrats got in, but the fact remains that that is what the situation is now. I trust the chairman will not take the remark about the Democrats too seriously.

The bill which you have before you is unknown to me. I never saw it until a few moments ago and have not read it over. Being told that you were interested in finding some form of compensation act for the District of Columbia, my only purpose here has been to show the results under our law and tell you how much we thought of them, and leave you to draw your own conclusions. If I have seemed to be somewhat partisan in some of my statements, it is only because of the underlying knowledge on which I appear before the committee and not because of any desire to plead the cause of anybody. As I said before, I have no criticism to make of any other form of doing business because, as a matter of fact, I have not the familiarity with any other form of business which would permit me to enter into any extensive criticism of it, although I can see certain places where I think our act and our method of doing business is better than that of some others, and it is for that reason that I have stated some of those things which have occurred to me as being an advantage under our act.

Our industrial-accident board—and that is the reason I am in Washington—appointed me on the executive committee of the International Association of Industrial Accident Boards, of which practically all the States holding industrial insurance are members, including Canada. At the convention which they hold each year I hear the troubles which other commissions and borads have and hear the difficulties which they meet with in administering their laws, and I presume, like everybody else who attends the convention, I go back to Massachusetts feeling that we have about the best there is after all and, Mr. Chairman, that is about where I stand.

Mr. UNDERHILL. Perhaps I might be excused if I quoted several lines:

> For forms of government let fools contest;
> Whate'er is best administer'd is best.

Mr. FITZGERALD. I think you have probably enunciated a very sound doctrine.

Mr. KENNARD. If there are any questions, I will be very glad to do the best I can to answer them. I do not know that there is anything more I can say which is pertinent.

Mr. UNDERHILL. There has been some question raised in our hearings as to the cost to the insurer as between the State control, or monopolistic form of insurance, and the stock company form of insurance. It has been contended on the one side that State insurance is much cheaper to the insurer because of the various features which enter into it, and then the companies contend that they have taxes to pay and other things in addition to what the State fund would have to pay, which justifies them in charging a trifle more. I know that in Massachusetts there is another condition which enters into the cost and which, perhaps, you might explain to the committee.

Mr. KENNARD. Well, when you talk about the comparative cost of State fund insurance and stock company insurance, and all that sort of thing, you might be able to get men who are familiar with the problems of Euclid or mathematical prodigies who on the ouija board might possibly be able to figure it out for you, but the differences between the different States are such that it is extremely difficult to figure that problem. I have often wondered, when that question came up, whether those administering the State fund put as much work into following up the cases as the insurance companies do. The insurance companies follow these cases very closely. When the time comes to stop compensation and the matter is brought to the attention of the board, the compensation is stopped, as it should be. Now, one fraudulent claim under the compensation act can do a lot of damage, and the question arises whether under the State fund they are able to maintain a field force, whether they are able to maintain an investigating force, and whether they are able to and actually do keep in touch with claims to such an extent that they are able to stop compensation when it should be stopped, all of which must be a factor in the expense. If the State funds carried the organization for that sort of work that the insurance companies do, you would immediately find them upon the same basis of cost that the insurance companies are, because I do not believe they can hire men any cheaper than the insurance companies can, and personally I do not believe they can do business as efficiently as the insurance companies can.

I am speaking now personally because I do not believe in Government control, and for that reason I do not believe it can be done. The business man who is paying the premiums in the first instance would rather have efficiency at a little cheaper cost. If you are going out to buy something you do not always go to the store that sells it cheapest, but you go to the store where you can buy it and be sure that what you get is right, or that if it is not right it is going to be made right. Service is the great slogan of the day. I think there is no doubt that the State funds do it cheaper; I presume they must do it cheaper, because all the figures of the State funds show they do, and nobody has ever proved they do not; so I think it is fair to assume that they do it cheaper, but that it is done as much cheaper as would appear upon the face of it is a matter of some doubt in my mind. Of course, the expense to the public under an act such as ours is very small. It cost the Commonwealth of Massachusetts to run our department last year 2.2 per cent; the cost to the Commonwealth of Massachusetts to administer the State compensation act was 2.2 per cent on a disbursement of over $6,000,000. That was the amount paid out in compensation and medical benefits. Now, that figure is of not the slightest value in comparison with the State funds' figures, because the State funds are doing the work, or are supposed to be doing the work, that the insurance companies are doing and charging for, and I do not believe there is anybody living that can tell you the difference in expense between the State funds and the insurance companies. It can not be done because there are too many factors to be considered.

Mr. UNDERHILL. Do those figures of $6,000,000 represent the average amount of benefits distributed in Massachusetts during the last five or six years?

Mr. KENNARD. No; because there has been an increase; our benefits have been increased. We started in with a maximum of $10; that was increased to $14, and we are now paying $16 as the maximum, and we are paying $4,000 to dependents when death results because of certain specific injuries, which are not of any great consequence in answering your question. There has been a gradual increase. Under the law all injuries have to be reported to our board regardless of whether the people are insured or not. We had last year reported in to our board over 190,000 injuries in Massachusetts, and that is more than we have ever had before. The scale of wages, as everybody knows, has been higher, and the increase can be explained by changes in the law and economic developments. Of course, it takes a certain length of time for such a law to become known. It is generally agreed that you can figure on five years as being the time necessary for the law to become fairly well known in the locality in which it is instituted.

Mr. PROCTOR. Mr. Kennard, have complaints come from the employers in any substantial degree?

Mr. KENNARD. Absolutely not.

Mr. PROCTOR. They are satisfied with the present arrangement?

Mr. KENNARD. They are not only satisfied but they have shown an inclination to fight for it; they want it. The State fund movement in our State is a lifeless sort of thing. Ordinarily the American Federation of Labor passes a resolution at its annual meeting indorsing a bill for a State fund; they appear on it and then they disappear. Our contest is between State fund and self insurance, and I think, perhaps, I am not violating any confidence when I say that it has worked out as a legislative proposition that one has balanced the other. Some of the large employers want self-insurance and a lot of small employers think they want it, but they really do not want it. I mean they would find that there was nothing in it for them, because if your risk is not big enough you are foolish to carry it. There is no difference between compensation insurance and any other insurance; you have got to have sufficient capacity to warrant you in carrying the risk. A self-insurance bill went so far as to reach the governor, Gov. McCall, and he sent down to our board to see whether we had any opinions on it. We sent a communication to the governor stating that the industrial accident board, so far as its viewpoint was concerned, was opposed to self-insurance, and the governor vetoed the bill. There is more of a fight made on that than there is on a State fund.

The laboring people of Massachusetts are satisfied with the administration of our law. There is absolutely no question about that. I could cite you all sorts of testimonials, of an official character, showing that they are satisfied with the administration of our law, as it is at present being carried on. How long that satisfaction will continue no one can predict; it may blow up next week, but at the present time, at least when I left Boston, they were satisfied, and I do not anticipate that my absence will cause any dissatisfaction.

Mr. F. R. JONES. The laboring people have actually appeared at hearings and expressed themselves as satisfied with the treatment they received from the insurance companies, as I recall it.

Mr. KENNARD. I do not think, Mr. Jones, that I ought to represent the Commonwealth of Massachusetts as cheering for the insurance companies; they do not; but they do say that the law is being administered properly, and I want to say that I think they express their feelings of satisfaction because of the way the board is looking after them rather than the way the insurance companies are looking after them.

Mr. PROCTOR. What class of employees does your law cover?

Mr. KENNARD. All except domestic servants, seamen, and farm laborers.

Mr. PROCTOR. Has there been any serious demand for the inclusion of domestic servants?

Mr. KENNARD. Oh, no; they are quite out of the whole idea of compensation insurance. As I see it, compensation insurance is based upon the fundamental proposition that industry creates a certain number of injured and maimed in the community, and that it should be charged against industry as one of the costs of industry, and, of course, that line of reasoning, if it be reasoning, eliminates the domestic servant.

Mr. PROCTOR. The domestic servant is not eliminated in the present bill?

Mr. KENNARD. Well, perhaps I have said something I should not have said. As I said before, I have not read this bill.

Mr. PROCTOR. I infer that your act does not include office clerks, people in clerical positions.

Mr. KENNARD. Our act covers all employees, and an employee is a person who has a contract of hire, express or implied, to do a certain class of work. I might say that our act eliminates the independent contractor, and we also have a provision whereby an employee of an independent contractor may recover against the main contractor if the independent contractor does not carry insurance, the purpose of that being, in the first instance—and it has worked out that way—to escape the possibility of a man letting a contract to some one who was a straw man and thereby evading the compensation act. So they are covered by that provision.

Mr. UNDERHILL. I will say, Mr. Proctor, that clerks are covered.

Mr. KENNARD. I think Mr. Proctor understood that from my answer.

Mr. LEA. There is a limitation on that, though, is there not? A certain number has to be employed.

Mr. KENNARD. No; there is no limitation as to number. You understand, our law is elective and not compulsory.

Mr. PROCTOR. Of course, the advantage of elective insurance is that it relieves the employer of civil liability in court.

Mr. KENNARD. As I stated, a man who takes out insurance has no further responsibility; it becomes, from the standpoint of financial responsibility, a matter of utmost indifference to him; there is no further liability on his part and it does relieve him.

Mr. BRASHEARS. Mr. Kennard, are the premiums collected by the insurance companies on this class of business in your State subject to State taxation?

Mr. KENNARD. I can not answer that question. We do not have a thing to do with the insurance in our department, and that is one of the points I made, that we have nothing to do but attend to this one thing.

Mr. BRASHEARS. I thought you knew something about it outside of that thing, whether or not they are subject to taxation.

Mr. KENNARD. I do not know, but almost everything now is subject to taxation, and very likely they are. I want to say that I appreciate very much the opportunity of appearing before the committee.

Mr. FITZGERALD. We are very much obliged to you for your very clear setting out of the advantages of the Massachusetts act.

Mr. KENNARD. If it will be of any service to you, I have a copy of the act.

Mr. FITZGERALD. I think we have a complete digest of all the acts, but we will be very glad to have a separate copy.

Mr. KENNARD. Let me call your attention to the introduction, which will show you something of the board's work under the act which I have not touched upon at all, because I did not think that was any part of the hearing.

Mr. UNDERHILL. I will say for the benefit of the press that Mr. Kennard has remained over at his own expense.

Mr. BRASHEARS. Mr. Kennard, you said that the employer in Massachusetts was relieved of liability regardless of the possible failure of insurance companies. Have you had many such instances in Massachusetts and with what results?

Mr. KENNARD. Two; one in the early stages, which resulted in the employees receiving a fraction or a percentage of their claims, but Massachusetts now has a law whereby any insurance company which does a compensation business has to file a bond, the condition of which is that if they cease doing business in Massachusetts for any reason that that bond shall cover their outstanding liabilities, and we now have in our hands a considerable amount of money which we are paying out in accordance with that act to injured employees, and when we find we have any ahead we have to release it to the New York insurance department, which is also under this act, and I guess thay are paying it out over there when they get it from us. Those are the only two cases and, of course, in the second case the employees were entirely and amply covered. Of course, as to the fund which remains in our hands we see to it that there is always enough money remaining to meet any possible liability which exists and which may accrue.

Mr. BRASHEARS. And since you have had the bond system you have had no failures that have caused any hardship?

Mr. KENNARD. No, sir.

Mr. PROCTOR. What percentage of the employers have elected to come under the act?

Mr. KENNARD. We figure that about 90 per cent of the employees are covered.

Mr. PROCTOR. All the large ones, I assume?

Mr. KENNARD. No; we have two or three that are not. The New England Telephone Co. does not take out any insurance, so that they are subject and liable to suits at law with all their defenses removed, but the last time I knew anything about them they had never been sued at law. Of course, they have their own organization for paying benefits and medical expenses, and those benefits, I understand, are somewhat more advantageous to their employees than those provided by the compensation act. Through some way or other, which is not quite understandable to me, they have escaped suits at law.

Mr. UNDERHILL. You understand, do you not, that in Massachusetts a man who does not subscribe to the workman's compensation act has no defense whatever at law?

Mr. KENNARD. But they must prove negligence.

Mr. FITZGERALD. Then they have a defense. If a man is injured and there is no negligence on the part of the employer there is no right of recovery.

Mr. KENNARD. That is true, and negligence must be shown before there can be a recovery.

Mr. PROCTOR. That is true of all of the laws, that they all remove those defenses.

Mr. KENNARD. I am not competent to tell you what all the compensation laws provide. We have a great deal of difficulty in interpreting our own law, and that difficulty is also present in the Supreme Court, according to their proceedings.

Mr. KEEGAN. Did I understand you to say that you knew of two insurance companies that failed in your State?

Mr. KENNARD. The New England Equitable and the Casualty Co. of America, so far as I know; I do not know of any others.

Mr. KEEGAN. I just wanted to ask you for my own information and for the information of the committee, if they are interested, whether in your experience with compensation laws you ever knew of a State fund to fail?

Mr. KENNARD. My knowledge of State funds is extremely limited, but I have heard rumors to the effect that the Washington one went up with a loud bump, but whether that is so I do not know.

Mr. KEEGAN. To the best of your information you do not know of any?

Mr. KENNARD. No, sir; I told you I did not know anything about the State funds except in the most limited way, and I trust I have not said anything here in criticism of State funds because it would ill become me to come down here and do that.

Mr. HOAGE. I would like to say, for your information, that the Washington fund did not fail.

Mr. KENNARD. The gentleman asked me and I said what I had heard rumored.

Mr. F. R. JONES. Mr. Hoage does not state that quite fairly, because there were certain groups there that were bankrupt and the employees were not paid for six years; they were held up for six years.

Mr. KENNARD. I can not conceive of a State fund going up, because I would assume that a State fund would have the State behind it. I can not see any possibility of its being repudiated, because it is an obligation of the State and it would seem to me that the credit of the State would be behind it. I can not conceive of a legislature, where a State fund has been depleted, not making an appropriation to make that fund good; it would be hard for me to conceive of a situation like that.

Mr. F. R. JONES. In West Virginia it was bankrupt to the extent of $675,000; the Ohio fund has been shown to have been actuarially insolvent, and, as far as that is concerned, the New York fund was very close to it.

Mr. KENNARD. I do not know anything about the figures you name.

Mr. FITZGERALD. You understand the term "actuarially"?

Mr. KENNARD. I know what it says in the dictionary, but I do not understand it.

Mr. FITZGERALD. It means that an insurance man could figure out that if they are called upon to meet all liabilities that theoretically they might not be able to meet them, but that has never practically happened.

Mr. F. R. JONES. That is a fair statement, because if they had been called on to meet all of their liabilities they would have been bankrupt and had to close. They would have to close up an insurance company if that were found to be the condition.

Mr. FITZGERALD. But they never happened to find that condition. If Mr. Edgar Wallace is here we will now be glad to have him make any statement he desires to present to the committee.

STATEMENT OF MR. EDGAR WALLACE.

Mr. WALLACE. Mr. Chairman, I represent the American Federation of Labor. The way the American Federation of Labor, or any of its affiliated organizations, reaches a conclusion is when the men who form that organization get together and, by resolution introduced and adopted, state a policy. The only way that the workers can give expression to their ideas is when they get together, initiate an idea, propose an idea, and the majority of them adopt that idea.

I was present at the last meeting of this committee. At that time the chairman asked if there was any one present in the room who opposed a compulsory workmen's compensation law. No one placed himself in opposition to that proposition. It was evident that all present in this room at that time favored a compulsory workmen's compensation law.

My understanding of the situation, as it presents itself to-day, is that there is no opposition to the enactment of a compulsory workmen's compensation law, so I shall not present any argument in favor of such a law, but there appear to be differences of opinion as to whether the compensation should be insured solely by the State or whether employers shall be permitted to insure their liabilities in private companies, or if some one financially responsible would be permitted to guarantee the payment of compensation to injured employees. To this matter I want to offer a few arguments in favor of exclusive Government insurance. The insurance companies are in the business for the profit of the stockholders in their companies. The profits consist of the difference between that which they pay out for liabilities and the money they take in as premiums.

The insurance companies may not undertake to run the business of those who are injured in their company, but they will naturally offer inducements in the shape of cheaper premiums to those whose business affords the least liabilities. This will be good in one way, inasmuch as it will make for better safeguards in the plants they insure. But such safeguards could also be secured in the case of Government insurance. The insurance companies would consider only the risks run by their companies for liabilities while the Government would have a broader idea of the welfare of the country in a general way. For instance, I want to say that some of the arguments

I am about to offer were lightly touched on by Mr. Bohler, of the Pennsylvania Industrial Commission.

In my opinion compensation for injury is closely allied with the rehabilitation of workers injured in industry. An insurance company, thinking only of the percentage of risk incurred, would place a premium upon the employment only of men who are in possession of their full vigor. They would place a penalty upon the employment of men who had been injured in industry or in war. Employers and business men, looking after the lighter premium, would be induced to employ only men who met the requirements of the insurance companies. On the other hand, State insurance would be part of the functions of the Government and the Government would take into consideration the benefit that would accrue to the Nation by the rehabilitation of men who had been injured in the industries of the country. The broader benefit to the country at large would be considered and men injured in industry, or who had been injured in war, could be employed and would be employed without incurring any penalties in the way of enhanced premiums. The insurance companies would consider only the risks incurred when insuring the liabilities of employers.

The compensation law now proposed for the District of Columbia takes into consideration the families of men who might be killed in industry and defines compensation for such families. An insurance company, considering only the value of the premium as compared to the risk, would ask lighter premiums in plants or industries where the workmen employed had no dependent relatives. The result would be to discourage the employment of married men, men with dependent relatives, and would work to the detriment of the country as a whole, and it would make for the waste of the human resources of our country. The State or the Government, recognizing the value of the family, would include that risk in the broad application of the compensation tax upon employers.

Another argument I have to offer is one based upon experience. In Indiana the workmen's compensation law permits insurance by private liability companies. The result is that the erstwhile ambulance-chasing lawyer has been converted into the claims agent of the insurance company. When a man is injured in industry these claims agents are at his cot in the hospital almost as soon as he gets there. They seek to get from him, in consideration of certain moneys they offer, an agreement or "a statement of facts" which takes the place of the old liability settlement that was common before the enactment of any workmen's compensation law.

If the injured worker in that State refuses a settlement with the claims agent, the insurance companies have a corps of able lawyers who will fight the claims of the workers for compensation through the courts set up for the administration of the compensation law in that State. Against these claims lawyers the individual worker has but very little chance. We found that they had to employ lawyers, if they had the means financially, to compete with the very able men whom the companies had hired. The organized workers of the State have been forced to install legal departments, the duty of which is to present the claims of injured workers in the compensation courts. We find, through the legal department of the organized miners, that we have been able to secure possibly twice as much of the compensa-

tion that was actually due the injured worker than they could have secured for themselves, and also we have guarded our fellow workers from exorbitant charges which had been made by lawyers that they themselves would employ. Again, we have been able to furnish our people lawyers trained in compensation cases. Now, if the organized workers were forced, for the protection of the members of their organization, to secure adequate legal help, what then is the status of the unorganized workers? The unorganized workers, Mr. Chairman, either had to come in themselves against a corps of trained lawyers permanently hired by these insurance companies, or else they would be put to the expense of employing lawyers. To my knowledge that compensation law has been nullified by a corps of expert claim agents employed by the insurance companies and by the machinations of the very competent lawyers that the insurance companies employ to save the payments that the insurance companies have agreed to assume.

Mr. F. R. JONES. May I ask Mr. Wallace what State he is speaking about?

Mr. WALLACE. I was talking about Indiana, where I had personal experience until the last three years.

Mr. F. R. JONES. Do you have a commission in Indiana?

Mr. WALLACE. There is an insurance commission in Indiana.

Mr. F. R. JONES. The commission passes on all these claims?

Mr. WALLACE. Yes; but before that commission must appear the men who have been injured, either personally or by a representative, and the insurance companies have their corps of lawyers, claim agents, and witnesses.

Mr. F. R. JONES. Does not the injured employee have his rights protected by the commission?

Mr. WALLACE. We found that by having a legal department in certain of the organizations they were able to get ever so much more or nearer the amount it was intended they should receive. We adopted this legal department because of our experience and because of the fact that many of our people were mulcted out of that which was really due them.

Mr. F. R. JONES. The charge you make, then, is directed against the commission?

Mr. WALLACE. It is not directed against the commission, because the commission is susceptible to the influence of the arguments that are offered. I do not mean to say that they themselves are dishonest, but I mean that the ability of a workingman to present his case as against the ability of trained men is not even; that the claims lawyer is better capable of presenting the case for the insurance company than is the injured workman, and failing to present the case himself he has to go to the expense of hiring a lawyer and hence he is in almost the same condition he was before any workmen's compensation law was passed; he has to win his case before that court either by the ability of himself or his representative.

Mr. FITZGERALD. Mr. Wallace, you have said that in insurance by insurance companies there would be a tendency to discourage the employment of those who have dependents because the risk would be so much greater; that the insurance companies would possibly offer lower premiums and that would influence the employers never to employ anybody, if they could help it, who had dependents, that

is to say, they would favor the unmarried man, the harum-scarum fellow, the person who had no relatives, and where there would be no liability on the insurance feature. What I was going to ask you was whether or not you had ever had any practical examples of that, whether you knew of any place where such a thing had occurred or whether it has not yet had an oportunity to occur on account of such a law not being enforced, where there is an insurance feature?

Mr. WALLACE. If an employer would hire this man and would refuse to hire that man, it would be very difficult to get from him a statement of the fact that he hired this man because——

Mr. FITZGERALD (interposing). I agree with you, and I agree with your proposition, because if I were going to employ a person to work for me and had a choice between two men, one of whom I knew to have a wife and 12 children and a dependent father or mother, and a young man who had no father or mother living or a wife and children, I certainly would employ the young man, as a matter of cold calculation. Your proposition is sound, but I wanted to know whether it had ever worked out.

Mr. UNDERHILL. Right there I would like to ask some of these insurance representatives whether they make a difference of that kind.

Mr. F. R. JONES. None whatever, and none has ever been made.

Mr. FITZGERALD. I did not know whether there had ever been any opportunity for it. I can easily understand that it would be to their advantage to employ an unmarried man, because I do not understand that you have any insurance feature in Massachusetts for the dependents.

Mr. UNDERHILL. You are mistaken, because dependents are paid over a period of years, and I think there is a death benefit, too.

Mr. PROCTOR. There is a death benefit amounting to $4,000.

Mr. UNDERHILL. $4,000 is paid in case of death.

Mr. F. R. JONES. I think I can throw a little light on that, if you will allow me.

Mr. FITZGERALD. I have asked for one definite example of a working out of that suggestion, and that is all I want.

Mr. F. R. JONES. There is no such case in connection with stock insurance, but I can cite you a case in connection with self-insurance. I do not like to mention corporations here, because that is getting too specific, but I can cite you corporations in the State of New York that are self-insurers, that have been charged with doing that very thing, and that is one of the arguments that the labor people in the State of Massachusetts urge against self-insurance; they make that charge in trying to ward it off, but that charge has never been made in connection with stock insurance companies.

Mr. FITZGERALD. There was a complaint against self-insurance because of the likelihood of the nonreemployment of an injured workman.

Mr. F. R. JONES. Yes.

Mr. FITZGERALD. But not upon the matter touched upon by Mr. Wallace.

Mr. WALLACE. May I ask Mr. Jones a question as an insurance man?

Mr. FITZGERALD. Yes.

Mr. WALLACE. Mr. Jones, if I were to take out a straight insurance policy would you give me a lighter premium on condition that I named no beneficiary?

Mr. F. R. JONES. No.

Mr. WALLACE. If I absolutely had no beneficiary to whom the money would be paid?

Mr. F. R. JONES. No; they do not ask that question except as they have in mind your wish. There is no difference in life insurance premiums on that account.

Mr. WALLACE. But if there is no one to whom this money can be paid then you are liable to nobody?

Mr. F. R. JONES. We would be liable to the estate.

Mr. FITZGERALD. Your administrator.

Mr. WALLACE. Is it not a fact that all compensation laws mention certain close relatives?

Mr. F. R. JONES. As dependents.

Mr. WALLACE. Hence if there are no dependents, no close relatives who are dependents, there is no risk, and my argument is that a business institution, like an insurance company, would be benefited by the employment of men who leave no risks behind.

Mr. F. R. JONES. I can explain that to you. The insurance rates are based on the whole exposure of the law and on experience over a series of years under similar laws or a particular law. An insurance company takes all of those things into account and it averages them up. The rate that is given to an employer is based upon that experience. The insurance companies pay no attention to dependents, except in so far as the law provides for dependents, and no matter what is provided as to dependents the rate never changes, the insurance companies not caring how many dependents there are.

Mr. WALLACE. Is it not a fact that you would give consideration to a plant that had safety appliances?

Mr. F. R. JONES. Yes; every time.

Mr. WALLACE. And you would do that because as a business institution you know safety appliances lower the risk.

Mr. F. R. JONES. Yes; and they save lives and limbs.

Mr. WALLACE. I am not saying this because I consider you inhuman but as a business man you are not considering the safety of lives, but you are considering the lessening of risks, hence if a man has no dependents—and a great deal of this insurance goes to dependents—that would lower the risk and would have a tendency to lower the premiums upon a particular plant that employed men who had no risks.

Mr. F. R. JONES. Not in specific cases.

Mr. FITZGERALD. That is absolutely sound there is no question about that, but whether it has ever had any actual working out is the thing I am trying to ascertain.

Mr. UNDERHILL. A man without any dependents could leave this $4,000 to a pet dog, if he wanted to do so.

Mr. F. R. JONES. Not under compensation laws.

Mr. UNDERHILL. I mean under regular life insurance.

Mr. F. R. JONES. Oh, yes.

Mr. BRASHEARS. You said a moment ago that the Government would have an advantage over insurance companies in that it would be able to apportion a decrease in rate over the whole industry instead of over a group——

Mr. WALLACE (interposing). I did not say that.

Mr. BRASHEARS. I am talking now about safeguards. You said that the Government would have an advantage over the companies in safety appliances in that they would have an opportunity to average it over all instead of a few.

Mr. WALLACE. I would not say that and I did not say that. It is not in my statement.

Mr. BRASHEARS. You said something to that effect.

Mr. WALLACE. I said that the Government would consider the broad effect upon the company in the rehabilitation of injured men in industry and would not penalize a plant for employing men who are not in full vigor. I believe the Government would and should give consideration to a plant that has all the safety appliances and that has the best safeguards for its employees.

Mr. BRASHEARS. Are you able to find in this bill before us any provision which provides that the Government shall give any advantage to a plant because of safety appliances?

Mr. WALLACE. I have not found it in that bill but I think it should be there.

Mr. BRASHEARS. I agree with you, but I find nothing in the bill which provides that the Government shall give such a plant any advantage.

Mr. WALLACE. It may be implied. I do not read it in the bill, but I think it should be there.

Mr. BRASHEARS. Do you think that a thing like that ought to be left to implication?

Mr. WALLACE. No; I think it should be made direct.

Mr. F. R. JONES. I think it is generally admitted that stock and mutual companies do more for accident prevention than any of the State funds on the average or any particular State fund.

Mr. WALLACE. I have no proof of that.

Mr. F. R. JONES. Well, I think it is generally admitted.

Mr. FITZGERALD. I think not, and they will not admit that in Ohio, and there, even without any insurance at all, we find very responsible inspection throughout the workshops and factories, and it is a very serious thing for any shop to have any machinery placed in a dangerous position or have the employees work in places that are at all dangerous.

Mr. F. R. JONES. But that is not done under the State fund law, and there is nothing done with which the State fund has any thing to do; it is done under the Industrial Act.

Mr. BRASHEARS. What I wanted to bring out was the relationship of those safety appliances to the premiums. It is common knowledge that where an insurance company goes into a plant and finds the employer installing certain safety devices that by the installation of those devices he may find it to his benefit by the cutting down of his premiums, but in this law, as I read it, and if I am wrong, I would like to be corrected, there is nothing which provided that the Government shall give any beneficial rate to an employer for the installation of safety appliances.

Mr. FITZGERALD. That is, as has been said, left to implication, and I think it is in the minds of the committee possibly to give a right to beneficial rating or preferred rating, if that is necessary, because there is a provision in the law providing for the inspection.

Mr. BRASHEARS. In law, there is no application of that to rates.

Mr. FITZGERALD. There ought to be, of course, and we possibly take it for granted, but might correct that, administered properly by a proper commission, as we already have and may have from time to time.

I would like to have Mr. Hoage reached this morning if possible, and I had hoped to reach Mr. Hookstadt and Mr. Nolda this morning and also Dr. Andrews.

Mr. Hookstadt, would you take the matter up?

Mr. WALLACE. May I make one more statement. In the conventions of the various State federations of labor, resolutions have been brought in, have been discussed, and in every instance it has been adopted in favor of State insured compensation laws. I think that is fairly established.

Mr. UNDERHILL. May I say practically all other accidents?

Mr. WALLACE. No, sir.

STATEMENT OF MR. R. T. HOAGE, CHIEF STATISTICIAN, UNITED STATES EMPLOYERS' COMPENSATION COMMISSION.

Mr. HOAGE. I had not expected to enter into this. Some outside party called me.

Mr. FITZGERALD. Would you rather have somebody else go on?

Mr. HOAGE. I have not anything particularly to say, any more than I have been requested to submit something on the State fund. But I did not want to get into an argument.

Mr. FITZGERALD. Very well. We would like to have that in writing now, or a little later, and would like to hear Mr. Nolda at the present time.

Mr. HOAGE. There is one question I would like to ask him, and I would like to submit a statement. He said the State of Washington had one fund which did not pay in six years. If you will tell me what the fund is, I will submit the annual statement for the State of Washington.

Mr. JONES. The Gunpowder?

Mr. HOAGE. There were 43 payments held up because of the mountain timber case. A constitutional question arose, and they were not paying the premiums until that was decided by the Supreme Court.

Mr. FITZGERALD. It would not make any difference how much money they had?

Mr. HOAGE. No. They withheld the premiums until the constitutionality of the act was decided, and then the money was collected, and I have the statement of the year, showing the deficiency in the fund because of the lack of payment of premiums, and then I have the statement for the next year showing the fund was balanced.

I might say this about the fund being solvent: When it was declared insolvent by the special investigation, the legislature immediately rectified two or three things written in the act because of those conditions, and the next year they set up something like $150,000 to make up the deficiency, and this last year, after the actuarial test, they have returned now to the fund $250,000, so that fund was that much more than solvent after the actuarial test.

STATEMENT OF MR. HENRY NOLDA—Resumed.

Mr. NOLDA. While a stock company may be all right for any of the States, I claim it is not a just proposition for the District of Columbia. After all, Mr. Chairman, the payment of that insurance falls on the consumer, irrespective of who directly pays the insurance, it is added as overhead expense to the business, and the consumer eventually has to pay it. I will only cite your State, Mr. Underhill.

Mr. UNDERHILL. I agree with you absolutely.

Mr. NOLDA. I will also mention a great shoe-manufacturing State, which manufactures shoes for one-half of the United States. That is a broad proposition; it is just argument. Those shoes are spread broadcast throughout the United States, and every individual in the United States who is purchaser of that shoe is practically paying that compensation that the proprietor pays, whereas, in the District of Columbia, we have no manufacturers. All goods sold here in the District are consumed by the citizens of the District, and it makes it a hardship on the consumer to pay a tax, which, after all, is nothing in the world but his own security as compensation for insurance of that kind.

The difference in cost in your State and in the State of your chairman there in insurance is $2,522,861.26, according to the figures of the Department of Labor. I want to ask this committee in all justice in behalf of the workingman, do you think it a fair proposition to put that extra tax on the citizens of the District?

Mr. UNDERHILL. What do you mean to say—that there is over $2,000,000 paid in premiums in Massachusetts and in Ohio?

Mr. NOLDA. Yes, sir; according to the Department of Labor. In Massachusetts there are 1,109,834 people eligible to insurance; in Ohio there are 1,008,713. You have in Massachusetts 1,321 more people to insure than you have in Ohio. The cost in Massachusetts to insure those 1,109,834 people is $2,802,457.26

Mr. UNDERHILL. What is the cost of premiums?

Mr. NOLDA. That is what the Department of Labor gives.

Mr. UNDERHILL. Why——

Mr. NOLDA (interposing). Not the cost of the premiums; that is the cost that the insurance gets.

Mr. UNDERHILL. They pay out over $6,000,000.

Mr. NOLDA. I am not speaking about what they pay out.

Mr. UNDERHILL. But they only take in $2,000,000 and pay out $6,000,000——

Mr. NOLDA (interposing). That is what it cost the people to pay those insurance companies for the sake of insurance, according to the statement of the Department of Labor.

Mr. ANDREWS. I recall an official investigating committee in Massachusetts extended over a period of some three years. The employers had paid an unnecessarily high sum, which amounted to about two and one-third million dollars, enough, it is said, to have paid all the

expense of the insurance, insuring one complete policy one year. That was the result set forth in the report.

Mr. FITZGERALD. That was argued here at the last meeting of the committee. He went very closely into the differentials and all the different factors, taking out the allowances. He estimated a difference of about 10 per cent, but claimed it was worth it.

Mr. JONES. As an actuarial proposition?

Mr. ANDREWS. I have the opinion that those figures ought to be further discussed here to-day by some of the experts.

Mr. JONES. I think it is well, too, to remember there might be some difference in the benefits payable under the different laws. But a comparison simply of premiums collected would not be particularly valuable unless there was also a comparison strictly applied for the benefit from the premiums, as the premiums and benefits bear a very distinct relation to each other.

Mr. LEE. How many employees are subject to the Ohio act and how many to the Massachusetts act?

Mr. NOLDA. Subject to the Ohio act, 1,008,213.

Mr. LEE. How many in Massachusetts?

Mr. NOLDA. Massachusetts 1,109,134.

Mr. LEE. Those are the estimates made by Mr. Hookstadt?

Mr. NOLDA. Of course, I have no authority for stating these estimates are right. But Mr. Hookstadt is here and he can verify it.

STATEMENT OF MR. CARL HOOKSTADT, BUREAU OF LABOR STATISTICS, UNITED STATES DEPARTMENT OF LABOR.

Mr. FITZGERALD. Is there some interpretation on your part or solution? I would like to ask you definitely whether or not the District of Columbia is large enough to support State funds?

Mr. HOOKSTADT. The only thing I can do, Mr. Chairman, is to compare the District of Columbia with other States that have a fund. The estimate of the number of private employees covered by the act would be 108,000 or 110,000.

Mr. LEE. Does that include railroad employees?

Mr. HOOKSTADT. That includes all.

Mr. LEE. Are you quite sure they would come in this act?

Mr. JONES (interposing). Despite the interstate commerce act.

Mr. FITZGERALD. We would rather you would not argue.

Mr. JONES. We would like to inquire whether Mr. Hookstadt appears here as a proponent or expert?

Mr. FITZGERALD. He appears as an expert summoned here by the committee itself.

Mr. HOOKSTADT. One hundred and ten thousand, as I say, is the estimated number of employees. There are about a dozen States that have a fewer number of employees than that, according to the estimate that was made. Of course, you must bear this in mind, that the industries in other States are more hazardous on the whole than they are in the District of Columbia, therefore that the total premium income compared with the same number of employees would be greater in other States.

I will just enumerate the States that have a smaller number of employees than would be covered by the District: Alaska, Arizona, Idaho, Delaware, Montana, Nevada, New Hampshire, New Mexico,

North Dakota, South Dakota, Utah, Vermont, and Wyoming—all those States have fewer employees covered by their compensation act than in the District. Three or four of these have competitive State funds. Nevada has an exclusive State fund, and they seem to be doing well enough with a limited number of employees. So, in view of that, you can draw your own conclusion, Mr. Chairman.

Mr. FITZGERALD. I wanted your opinion as to that. You think, then, that the District of Columbia would be large enough to support a fund. Would there be any advantage to have that exclusive or otherwise, that if there were any advantages in any case of an exclusive one, would it be emphasized with reference to a place like the District of Columbia, or would it be specially disadvantageous?

Mr. HOOKSTADT. You mean as contrasted with competitive State funds?

Mr. FITZGERALD. Yes.

Mr. HOOKSTADT. I question whether the District is large enough to have competitive State bonds.

Mr. FITZGERALD. That is, the smaller the place and the more limited the risk, the more advantageous the exclusive feature might be, in your opinion?

Mr. HOOKSTADT. Yes. If you have competitive insurance, that would mean railway companies, terminal companies, and street car companies would take out insurance, and that would leave very few of the hazardous industries to be covered.

Mr. FITZGERALD. It would sort of destroy the benefit of the success of the act or tend to do so, you think?

Mr. HOOKSTADT. I question whether they would be large enough for competitive State funds.

Mr. FITZGERALD. If this act did make it competitive, would that tend to destroy the benefit of the act?

Mr. HOOKSTADT. I do not know just what is in your mind, Mr. Chairman.

Mr. FITZGERALD. You say it is not large enough, and yet if we were to do it, whether it was large enough or not, what is going to be the result?

Mr. HOOKSTADT. It would probably be too expensive or undesirable to have a fund that has only a few thousand or $50,000 premuim. You must have a sufficient premium income to operate a fund or any insurance successfully, because you have a certain amount of overhead.

Mr. FITZGERALD. Suppose we go ahead. You say it is not large enough for competitive insurance. Suppose we go ahead and do have competitive. In a competitive system here, what is going to be the result? Is it going to destroy the benefits of the act, or will it ruin the State fund, or just what is the effect of it?

Mr. HOOKSTADT. It will probably ruin the State fund. If you have competitive insurance, you would probably have self-insurance.

Mr. FITZGERALD. Do you think it would bring the law into disrepute by bringing the State fund into insolvency?

Mr. HOOKSTADT. It would probably be one result.

Mr. FITZGERALD. I am just trying to get your idea about it. Could you analyze different factors entering into the expense ratio—take the expense of the stock companies, as I believe Mr. Jones suggested they returned about 37 or 38 per cent of the amount of premiums

paid for the expense of the operations and dividends to stockholders, etc., and that out of each dollar paid the balance of the dollar would be 63 cents or 62 cents, the amount which is left for the working man.

Mr. HOOKSTADT. If you will permit me, Mr. Chairman, I would like to state just how a comparison of costs to the employer in different jurisdictions and between different laws can be made. There are two ways: The first is to compare rates in New York with those of Massachusetts and with those of Ohio. That is one way. I question whether you can secure any definite results thereby, because there are so many conflicting factors entering in.

In the first place, you have got to take into account the difference in benefits. A rate may be higher than a rate in another State because the benefits are higher. You have got to have a differential that takes care of that benefit, and there are at the present time no satisfactory factors which have been computed that will state accurately the difference in benefits between the States and the other complicating factors are the question of classification.

In the second place, variations in classifications. You may say a coal mine is a coal mine whether in Ohio, Washington, or some other place. But if you read the manuals you will find a coal mine in one State may mean a different thing in another State; they have got to be the same in order to have accurate comparison.

In the third place, there is a difference in hazard in the same industry.

In the fourth place, the pay charge of the insurance carrier. One State fund may charge a high enough rate to pay back dividends; another State may make the rate just high enough to cover current losses. So, as a result, you can not compare rates. The other method of comparing costs——

Mr. JONES (interposing). I would like to say I think Mr. Hookstadt is entirely right.

Mr. FITZGERALD. I would rather you would let him go ahead. I think you analyzed this very well. I think he heard your analysis and really reaches the same conclusion on that.

Mr. HOOKSTADT. The second method of comparing costs is through the expense ratio. How are rates determined? They are based upon the actual loss cost, which is expressed in $100 of pay roll for each industrial classification, whether the textile industry or coal industry, whatever it is; they will find what the actual cost in losses in that particular classification is for $100 of pay roll. It may be $3; it may be 60 cents. That is called the pure premium and is the same for rate-making purposes regardless of who the insurer is.

From that they determine the rate. What shall the rate be? What is the actual rating charge to the employer? They have got to allow so much for expenses. and ordinarily the insurance department which fixes the rates takes the expense ratio of the stock company and they base it upon that. The average expense ratio of stock companies throughout the United States is 38 per cent. This is the percentage arrived at by the National Council on Workmen's Compensation, which represents all the insurance carriers, both stock and mutual.

Out of that 38 per cent, which is composed of a certain number of factors, first is the acquisition cost of 17½ per cent, the amount which

is paid to the brokers and to the agents for getting the business. It was stated here that the various elements are not unreasonable. They are necessary. My point is that the 38 per cent in the various elements are necessary for stock insurance. They can not do business at less than 38 per cent.

The acquisition cost, 17½ per cent, would be eliminated under exclusive State funds. There would be no need for getting business. All insurers would insure. Of course on competitive State funds they would have to get business like private companies, but the acquisition cost has been so far very small in the competitive State funds.

The next factor is home office administration, 8 per cent. Home office administration can be eliminated under exclusive State funds. The average normal insurance carrier does business in several States. They have a home office and they have agencies. It is necessary in a good many cases to send the claim to the home office. They must maintain a home office. It probably is necessary for the average insurance company. Again, it would not be necessary for the exclusive State fund.

Inspection and accident prevention work, 2 per cent. Necessary cost 2 per cent for inspection and accident prevention work. What percentage is paid by State funds I do not know. Very few State funds perform accident preventive work. New York does, and their average, is I suppose, about 2 per cent, maybe a little less. The other States do not do accident prevention work.

Mr. FITZGERALD. This is a function of another department within the State.

Adjustment of claims, 7 per cent. A lot has been said about service. It is necessary to have a large claims force to give the proper service to the employer and employee, looking after the claims, investigating, and so on. That is very true. The amount spent for claims is much smaller in the exclusive State fund of 7 per cent. However, I do not know whether that 7 per cent is entirely justified. The amount spent is not necessarily a test of services performed; that is, what service is given for that 7 per cent. The insurance carrier may spend considerable money to defeat a claim as well as to grant a claim; that is, it may be spent to defeat the employees interests as well as in the employees interest.

The third factor is taxes. To get a comparison, you must exclude taxes. The insurance companies must pay taxes. The average State tax is 2 per cent of the premium, and the Federal taxes about 1 per cent. So, you must exclude 3 per cent.

Mr. JONES. It is 1½ per cent for Federal taxes.

Mr. FITZGERALD. That would make 3½ per cent.

Mr. HOOKSTADT. That includes something else besides.

Mr. JONES. The figures of the New York State department are 3.63. That would make 4 per cent or a little over for State and Federal?

Mr. HOOKSTADT. Possibly. I think that is a little high—4 per cent.

Now, then, that is the only element that can be subtracted from the expense ratio of the stock companies, 5 per cent from 34. The average expense of exclusive State funds 5 per cent. In Ohio it is less than 3.

Mr. FITZGERALD. Less than 2, is it not?

Mr. HOOKSTADT. Yes, possibly. It depends upon what basis you make it on, but, to be safe, say 3 per cent. Then, subtract 5 from 34 and you have 29 per cent left. That fairly represents the difference in cost to the employer between stock companies and exclusive State funds—about 29 per cent; so it costs the employer 29 per cent more for his premiums, than if he would be insured in the ordinary exclusive State fund.

Mr. FITZGERALD. Do the private casualty companies pay their claims more promptly than State funds?

Mr. HOOKSTADT. That statement has been made here, and it is not true. There are so many of these problems that it is difficult to establish and get accurate information. That is one point. The investigation may establish that pretty fairly and pretty accurately.

We took from the record of the State industrial commission a table, and found what the length of time was between the date of the accident and the date the claim was made, and we tabulated those results and we found the following facts—I will now give you the average time elapsing between the date of the accident and the date the first payment was made. The average time is the median, not the arithmetic average.

We found that the California State fund was 26 days, which is the best record of all; Idaho self-insurers were 26 days; Oregon State fund was 28 days; Michigan stock companies 34 days; Michigan self-insurers, 34 days; Maryland State fund 25 days; Indiana insurance companies 25 days; Nevada State fund 36 days; Utah State fund 38 days; British Columbia State fund 41 days; Idaho insurance companies 41 days; Illinois stock companies 44 days; Montana self-insurers 45 days; Montana State fund 46 days; Michigan State fund 48 days. That shows that there are great variations between the mutual companies, between the self-insurers and between the State fund. You can not say definitely that one type pays more promptly than another type. As you will notice from those figures the State fund paid more promptly and some of them paid less promptly than any other type of insurance. The same is true of stock companies. But comparing the State funds with the best insurance figures the State funds pay a trifle more promptly.

Mr. JONES. Mr. Hookstadt, you have not any stock insurance figures for California, Maryland, or Utah. California States funds, the best you have, is at the top. You have no stock figures at all?

Mr. HOOKSTADT. I could not get the data.

Mr. JONES. Then it is not fair to put California at the top to compare with the State fund?

Mr. HOOKSTADT. No.

Mr. JONES. If you have not got any comparative figures, I do not see the significance of California being at the top.

Mr. FITZGERALD. I think you had an opportunity of going into that.

Mr. JONES. No; I have not, Mr. Chairman, only on the matter of costs. I may say that Mr. Hookstadt's case is all stated in this record right here, and I am prepared to take that article up, Mr. Chairman, and reply to the statements made by Mr. Hookstadt.

I claim those figures are not fair figures, and I am prepared to show they are not fair figures.

Mr. HOOKSTADT. Mr. Chairman, I would like if you have time to have Mr. Jones show what is unfair, because if there is one thing I did try to do it was to give a cross section of what the facts were. I eliminated all possible sources of error in arriving at those figures and tabulating the statement.

Mr. JONES. Mr. Hookstadt does not give any stock company figures for New York and Pennsylvania.

Mr. HOOKSTADT. I might say—and I explained it in that pamphlet—I tried to get the data for every type of insurance in every State I visited. Owing to the nature of the records in some States, I was not able to get it. I was not able to get the time of payment; I was able to get other data, such as time the award was made, and so on. So, if the data was not available I could not give it.

Mr. FITZGERALD. Have you got the data, Mr. Jones, for New York, Pennsylvania, and California?

Mr. JONES. No; I have not the data.

Mr. FITZGERALD. It is only necessary to point out that it is not given, and therefore it was not a complete comparison.

Mr. JONES. That is just the point.

Mr. FITZGERALD. We know that by looking at this ourselves.

Mr. JONES. I do not know. I think very few people have read this article here with that point in view. Take that total there, and I have already called attention to the fact that the figures are California figures given for State fund and no stock company features.

Mr. FITZGERALD. I understand that; but I do not like to have the witness interrupted.

Mr. JONES. Will I be given an opportunity to cover this?

Mr. FITZGERALD. Yes; in writing, if you have those figures. If not, it is sufficient to show what is obvious; that is, the comparison is not complete. I simply asked Mr. Hookstadt for his deduction from the investigations he made. Possibly all the necessary factors are not there to have him make a reliable deduction, but, nevertheless, it is his deduction, and I want his deduction and not yours.

Mr. JONES. The point is, Mr. Chairman, his deductions are not correct. I should like to have an opportunity to show——

Mr. FITZGERALD (interposing). If the figures are not correct, that is a different thing.

Mr. JONES. It is his deduction.

Mr. FITZGERALD. I want his opinion and your opinion, but that will not destroy his opinion.

Mr. JONES. Not at all; but I have not been given a chance.

Mr. FITZGERALD. You have had more chance than any other person before the committee. You not only had the chance allowed you, but have continually interrupted and contradicted the witnesses, to the disorder of the hearing. I do not want you to feel that you have more rights than anybody else.

Mr. JONES. I think that that is all right. I have been given, by the courtesy of the committee, the opportunity of asking questions. At the same time, where certain deductions are made on the basis of these figures, which I consider not fair figures, it does not seem to

me, in all fairness, I should not be given the opportunity to offer in rebuttal statements and arguments in answer to the deductions that I consider to be unfair deductions in that report.

Mr. FITZGERALD. You have taken up so much time of the committee I do not see how you could ask anything more. You have pointed out that these figures are not complete. Anybody can look at it and see it. You have pointed out that Mr. Hookstadt must necessarily rely upon incomplete data. You have not any more complete data. You have an opinion and he has an opinion. The committe would like to have Mr. Hookstadt's opinion for what it is worth.

Now, then, Mr. Hookstadt, will you answer the question as to the private companies paying more promptly than the State funds, from the past investigation, no matter how trivial it may be?

Mr. HOOKSTADT. I did not find them so.

Mr. FITZGERALD. Is it necessary to have the State insurance department formulate the rates and supervise them in your opinion?

Mr. HOOKSTADT. If you are going to have competitive insurance, it is necessary to have some State agency, whether the State insurance department or some other agency, to supervise the rates, both as to adequacy and as to service, yet it is necessary in competitive States, in States where you have competitive insurance. In exclusive fund States, it is not necessary, because you already have a State agency created—a Federal commission as in this case—which establishes the rate. To create another Federal Agency to supervise what this agency has done it seems to me to be unnecessary. It simply means one Federal department supervises the work of another Federal department.

Mr. FITZGERALD. I do not know whether you were present here or not, but the criticism that seemed to have merit in it, by Mr. Dolan, particularly, and I think partly by Mr. Proctor, was that it would be unwise to have a fund here placed for administration in the hands of a commission and have that commission fix the rate, because if they fixed them too high they might rather fix them too high in order to make the thing a success, and thereby bear harshly upon the people, or if they did fix them too low, influenced either by the idea of making it popular or otherwise, so that if catastrophe occurred or some other unusual drain upon the funds was made, that they would then try to possibly equalize that situation by being rather stingy in the application of the money to those entitled to the benefits of the act That was argued and presented very plausibly.

Mr. HOOKSTADT. There are two answers to that, Mr. Chairman. In the first place, in the exclusive State funds that exist, the administrative commission determines the rates of the classification. There is no other body that supervises those rates and it has worked out well.

The second answer is the fact that if one body of State officers is inefficient and incapable of making accurate rates, what assurance have you that any other State body is more capable of supervising those rates?

The CHAIRMAN. The argument was that those who were immediately interested in the administration of the act would be influenced naturally by their desires to make the matter appear successful from their point of view. I just want to get your idea about it as to whether or not you had studied it and whether or not you feel yourself it was wise or unwise.

Mr. HOOKSTADT. I do not think it is a matter of great importance. However, it is necessary in States having competitive insurance.

The CHAIRMAN. What would be the situation if he had no fund in the District, say, in the case of a widow of an employee who was killed, it was discovered that the employer had not been insured?

Mr. HOOKSTADT. I think that is an important question, Mr. Chairman. There has been a lot of discussion here against State fund or in favor of state fund—but the alternative, if you have no exclusive State fund, has not been touched upon.

Assuming now, for the purpose of argument, that you have no exclusive State fund, you will have competitive insurance. What will be the result? You must have a very strict State or Federal body that supervises that insurance, that is, to see that every employer is insured. One of the great difficulties and problems in most of the States is the fact that it is almost impossible to compel the employer to insure, that is, so many of the small employers do not insure; they do not know anything about the law, and if they do, they simply neglect it, and the first thing the industrial commission knows of whether or not the employer is insured, is when an accident occurs; and then they find out the employer is not insured, and he is a small employer, probably bankrupt—if it is a bad accident it will bankrupt him—and the employee will get nothing but compensation judgment, but the judgment would be no good in that case.

That happens over and over again in most of the States, and it will happen in the District of Columbia unless you have an agency which sees to it that every employer is insured. That is a difficult problem, in the case of small contractors and small employers. So it will mean that a number of injured workers will suffer as a result.

However, if you have an exclusive State fund, then if an accident occurs and the employer has not paid the premium, the workman receives compensation out of the fund. It is up to the fund to get the premium from the employer; the workman does not suffer.

Mr. FITZGERALD. It seems to me we ought to hold one more hearing. The committee will now adjourn until to-morrow morning at 10 o'clock.

(Thereupon, at 12.35 o'clock p. m., the committee adjourned to meet to-morrow, Friday, May 27, 1921, at 10 o'clock a. m.)

MSH # 22061

END OF
TITLE